O. Tenancy/47

1947. **File No.**

Legal Department

A BRANCH

Subject:—

Opinions under the Bombay Tenancy Act, 1939.

O. Tenancy/47

File No.

Gen. 191 e.

C O N T E N T S.

Legal Department File No. O.Tenancy/47.

Sr.No.	R.I. / O.No.	Subject.	Pages.
		Opinions under the Bombay Tenancy Act, 1939.	
1.	421 14.1.47.	Sec. 2-A(1)- Whether mortgagee who is in possession of land can claim to be the tenant of the lands.	1-2
2.	471 16.1.47.	Whether the land lord is liable to maintain the funds or the tenant.	3-9.
3.	624 17.1.47.	Sec.15(1) - Whether it is necessary to place the notification, fixing the maximum rent before the Provl. Legislature, before it is given effect.	11-13.
4.	730 21-1-47	Sec.15 (1) - Whether the land lord is liable to supply manure proportionately even though the rent is reduced and fixed under this section.	15-19.
5.	767 21-1-47.	Sec.12(3) Whether a civil Judge (Jr.Dv.) can be expowered to exercise appellate jurisdiction under the.	21-23.
6.	817 22-1-47.	Whether all the crops grown in the lands during a cultivating season have to be taken into account for the purposes of determination of rent.	25-27
7.	819 22-1-47.	Whether it will be open to the land lord to apply to the mamlatdar for determination of reasonable rent.	31-33.
8.	1587 15-2-47.	Secs. 3 & 4(1) - Rights of protected tenants - Definition of -	35-36.
9.	2919 26.3.47.	Sec.15 - "Irrigated Lands" - Meaning of for the purposes of this section.	37-39.
10.	3833 29-3-47. 4291 9-4-47.	Bombay T. Act - meaning of the words "Irrigated" and "Crop"(copies not typed)	41-47.

PHB 3/4 NHG 3.18

Sr.No.	R.I. / O.No.	Subject.	pages.
11.	4678 17-4-47.	Sec. 7 - Interpretation of explanation I to the(copies not typed)	49-51.
12.	5065 25-4-47.	Sec. 25(1) - Exemption of Rly. Lands leased for cultivation - Copy not ryped.	53.
13.	5009 16-5-47.	Whether in cases where the liability to maintain & repair the outer Bunds of demised lands is that of the L/L & he fails to do so, the tenant can repair the bunds & recover the costs from the L/L. .	55-56.
14.	6904 10.6.47.	Liability for repairs to Khar Bunds of certain lands leased by 'X'. copies not typed.	57-65.
15.	5110 18-6-47	Rent payable to Khots by the tenants. Draft letter by R.D. in the matter.	67-69.
16.	5807 3-6-47.	Tenancy Register - entering the names of protected tenants in the -	71-72.
17.	6058 10.6.47.	Agreement, usage or custom between the L/L a nd the tenant re-taking of crop to threshing floor.	73-77.
18.	7131 11.7.47.	Sec. 12(3)- Whether an appeal lies to the Court of the F.C.Sub-Judge.	79.
19.	7454 19.7.47.	Sec. 7 (1) Whether the period of a year notice mentioned in the section runs from 31st March only according to the definition of a year given in sec. 2(12) of the act.	81
20.	8472 16.7.47.	Application of the provisions of the act to service Inam lands. copy not typed.	83-85.
21.	7450 19-7-47.	Term "tenancy" - Definition of - Whether a mortgagee is a tenant.	87-89.

contd.

Sr.No.	R.I. / O.No.	Subject.	pages.
22.	9271 4-8-47.	R.D. Cir. dt.17-7-47. Appearance of pleaders in proceedings under the - (copies not made)	91-92.
23.	7384 17.7.47	Payment of compensation for deterioration of the de-requisitioned lands.	93-95.
24.	7942 1.8.47.	Whether the lease of 231 acres held by Shri Lallubhai comes within the purview of the Act.	97-101.
25.	6931 7.7.47.	Sec.25 - Whether the provisions of the Act apply to service inams lands held by tenants who are entitled to the protection conferred by the Act.	103-106.
26.	12021 4-10-47.	Payment of compensation in respect of derequisitioned lands.	107-111.
27.	9214 15.9.47	Sec.15 - Whether the lands growing paddy in the monsoon months must be held to be non-irrigated lands for the purpose of this section.	113-117.
28.	11842 20-9-47.	Classification of certain lands as non-irrigated for for purposes of no copy.	119.
29.	294-Conf1. 28.8.47.	R.D.Circular dt.22-8-47 Appearance of Pleaders in proceedings under the -	121.
30.	8179 9.8.47.	Sec.20 - Time limit for the tenant to tender the arrears of rent or to furnish security, for payment to save the termination of tenancy.	123.
31.	12216 9.10.47.	R.D.Circular dt.17.7.47 - Appearance of pleaders in proceedings under - (Copies not made)	125.
32.	9226 10.10.47.	Sec.25 - Whether the leases of lands of the Saranjam Estate during the management come within the section.	127-128.

Contd.

Sr.No.	R.I. / O.No.	Subject.	page.
33.	10351 29-10-47.	Sec.12(1) - Applications by tenants for determining rents.	129.
34.	8442 19-8-47	Whether the holders of inam lands are entitled to protection of this Act.	131-137.
35.	11421 29-11-47.	Sec.4 (2) Right to restoration of tenancy - whether it applies to heritable property.	139.
36.	11613 4-12-47.	Sec.28- Grant of stay order - Pending the disposal of revision application.	141-143.
37.	11403 29-11-47.	Sec.24(1A) - Whether compliance with the provisions of this section of obligatory in the case of the L/L who has not taken possession of lands surrendered by the tenant.	145-146.
38.	11498 1-12-47.	Sec. 15 - Whether this section applies to the rents payable by quasi-dharekaris and permanent tenants in the Khoti villages of Ratnagiri Distt.	147-153.
39.	11762 8.12.47.	Sec.26 -. Whether by virtue of this section permanent tenants are saved from the provisons of sec. 13A.	155-156.
40.	13343 23-12-47.	Whether a circular re-entertaining complaints by Magistrates, should be issued without consulting the H.Ct.	157-159.
41.	15078 12.12.47.	R.D.Endt. dt. 6-12-47. H.L.A's opinion No.10351 dt.29-10-47. copy not typed.	161-162.
42.	13184 20.12.47.	Sec.12 (ii) Whether the "Power of - Attorney" or "Wakalatnama" is liable to stamp duty Court fees respectivley.	163.

Point (1). It is true that an agriculturist who has been in possession of the land as a mortgagee cannot ordinarily claim to be the tenant of the land and will have to vacate it on redemption thereof; but section 2-A(1) of the Bombay Tenancy Act, 1939 is so very widely worded that any person lawfully suffa cultivating the land will be presumed to be a tenant for the purposes of the Act unless a declaration to the contrary is obtained from the Mamlatdar within one year of the coming into force of the Bombay Tenancy (Amendment) Act, 1946. It appears therefore possible for a mortgagee-cultivator to contend even after redemption that he is a tenant entitled to the benefits of the Bombay Tenancy Act provided that no declaration to the contrary is obtained by the mortgagor from the Mamlatdar as provided in section 2-A(1). To that extent the reply proposed on point (1) requires to be amended.

On point (2) the view taken by Revenue Department is correct.

Sd/-D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 421 , dated the 14th January 1947.

S.A.K.
15-5
4 copies

Submitted with reference to Secy. R.D.'s note dated 28-12-1946 at pages 11-12 ante.

2. The question raised in this case is whether the landlord or the tenant is responsible for the maintenance of bunds on khar lands. Under section 6 of the Bombay Tenancy Act, 1939 (Bom. XXIX of 1939) a protected tenant is responsible for the maintenance of boun-dary marks. But there is no provision in the Bombay Land Revenue Code, 1879 or the Tenancy Act to fix the liability for the maintenance of bunds either on the landlord or on the tenant. As observed by Secy. R.D. therefore the question whether the landlord or the tenant should pay for the maintenance of bunds depends on the individual agreements (Cf. sec. 26 of the Tenancy Act).

3. The construction and maintenance of bunds would be an improvement on land in view of the definition of "improvement" given in section 2(3)(b) of the Tenanct Act. Under section 12(5)(d) the improvements made by the landlord are to be taken into consideration in determining the reasonable rent. Under proviso (ii) to section 12(9) the reasonable rent can be enhanced on an application by the landlord for any improvement made by or at the expense of the landlord on account of which the produce of the land is increased. But there is no provision to reduce the rent on account of any improvements made by a tenant. Under section 5(2)(c) if any improvement is made by the tenant it is to be taken into consideration only for the purposes of determining the compensation, if any, payable to him at the time of eviction.

4. "Rent" as defined in section 2(10) means the

S.A.K.
15-5

consideration for the use or occupation of the land which is used for agricultural purposes. The view taken by Secy. R.D. that maintenance of bunds is included in rent is not correct. Subject to the maximum rate of rent fixed by Govt. under section 15(1) (vide G.N. R.D. No. 1140/45-F, dated 23rd November 1946) the rent payable by a protected tenant is the rent agreed upon between such tenant and his landlord (cf. section 5(1)). Only in the absence of agreement the rent is payable according to the usage of the locality and where there is dispute as regards the reasonableness of the rent payable according to agreement or usage the reasonable rent is to be determined . Even if the rent is demanded and paid at the maximum rate fixed by Govt. in the absence of any agreement between the parties it cannot be presumed that the tenant is excused from the maintenance of bunds there nor is there any legal anyhority to reduce the rent payable by the tenant on account of the responsibility taken by him for such maintenance.

Sd/-
6-1-47.

S.A.K.
15-F
4 copies

Only two alternatives are possible. If according to the agreement between the parties the landlord is liable to maintain bunds no difficulty would arise. The landlord under the agreement would be bound to maintain the bunds and would not be able to claim rent at a rate higher than the maximum rate of rent fixed by Government under section 15(1) of the Bombay Tenancy Act. 1939. If the tenant is, however, liable under the agreement to maintain bunds it would not be possible to relieve him of that responsibility, but he can, where the maximum rent is claimed, ask for the reduction of the rent under section 12, provided a rule is made under clause (f) of sub-section (5) prescribing the liability to maintain bunds as one of the factors to be taken into consideration in determining the reasonable rent.

Sd/-D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 471. dated the 15th January 1947.

S.A.K.
15-5
4 copies

Submitted.

2. Mr. G.K.Hegde has forwarded copies of the resolutions passed at the meeting of land-owners held at Hegde, N. Kanara District. The first resolution states that the Govt. Notfn. R.D. No. 1140/45-F. dated 23-12-1946 contravenes the provisions of sub-section (3) of section 15 of the Bombay Tenancy Act, 1939 a s it was not plac d on the table of the Provl. Legislature before issue. R.D. is of the view that the resolution is based on misreading of sec. 15(3) as the notification has to be placed before the Chambers of the Legislature in the Sessions next following the issue of a notification. The Secy. R.D. has forwarded the papers to the R.L.A. in continuation of the draft Press Note for advice.

3. Sub-section (1) of section 15 of the Bombay Tenancy Act, 1939 empowers Govt. to issue a notification fixing the maximum rate of rent. Sub-section (3) provides that every such notification shall be placed before each Chamber of the Provl. Legislature and shall be liable to be rescinded or modified by a resolution passed in which each of the said Chambers during the next following session. It is clear from these provisions that what the section provides is that the notification issued by the Provl. Govt. must be placed before each Chamber of the Legislature in the Session next following the issue of the notification under sub-section (1) of section 15. It is not therefore necessary to place it on the table of the Provl. Legislature before it is given effect to in any particular area in which the said section is in force. The view taken by the R.D. on this pun point is correct. The papers may be seen and returned.

Sd/-P.S. Nadkarni S.A.K.
14-1

Office of the R.L.A.

Seen and returned.

Sd/-D.V.Vyas.

Remembrancer of Legal Affairs.

U. O. R. to R.D.No. 624 dated the 17th January 1947.

S.A.K.
15-5
4 copies

Submitted.

2. The H.M.(R) observes that the landlord's liability to supply manure to a tenant is proportionate to the rent taken by him and that the landlord cannot be free from this liability merely because the rent is reduced to the maximum of 1/3 of the crop. R.D. propose to issue the draft circular to the Collectors (p. 5 ante) and a draft letter to the Director of Publicity (p. 7 ante). Secretary R.D. has shown the draft circular to the R.L.A. as it is a question of interpretation of law.

3. The draft circular at p. 5 ante states as follows:

> "Before the Bombay Tenancy Act came into force it was not uncommon for landlords to receive rents equal to one half share of the produce and to supply to their tenants either the whole or half the quantity of the manure or seed necessary for cultivation. Complaints are now received by Government that some landlords consider that as a result of the reduction of the crop-share rents by the fixation of the max. rates of the crop share under section 15(1) of the Act, their liability to supply the whole or half of the manure or seed has ceased. This assumption is not correct. Landlords should know that their liability to contribute manure or the seed etc. does not cease as the rights of the tenants in this respect according to usage are safe-guarded by the provisions of section 26 of the Bombay Tenancy Act. The liability of the landlords to make such contribution is reduced in proportion to the reduction in the rent. Besides, the intention of the L

intention of the Legislature in prescribing the max. rates of rents is to ensure that tenants who actually cultivate the land retain a fair share of the produce of the land."

By G.N. , R.D.No. 1140/45-F, dated 23-11-1946 issued under section 15(1) of the Bombay Tenancy Act, 1939 Government has fixed the maximum rate of rent payable by tenants as one-fourth in the case of irrigated lands and one third in the case of other lands, of the crop or ~~&~~ its value, or the rate agreed upon between the tenant and his landlord, whichever is less. It is clear from this notification that the landlord is not entitled to more than one-third of crop or its value from the land. Section 26 however provides that no provision contained in this act shall be construed to limit or abridge the rights or privileges of any tenant under any usage or law for the time being force or arising out of any contract grant, decree or order of a court or otherwise howsoever. If it was the right of a tenant to be supplied with manure or the seed etc. by the landlord it would not ceased merely because the rent is reduced to the maximum of one-fourth or one-third in the case of irrigated and other lands respectively. This liability of the landlord will continue as ~~f~~before and will not be affected by the reduction in rent, fixed statutorily under section 15(1) of the Act(pl. see rule 7 of Bombay Tenancy Rules 1947). The draft circular as amended in pencil appears to be in order.

Sd/-P.S.Madharani.
16-1

S.A.K.
18-8
4 copies

Office of the R.L.A.

If, according to the usage or agreement, the liability of the landlords to provide manure or seed is fixed in proportion to the rent agreed upon that liability would under section 26 of the Bombay Tenancy Act, 1939 be now proportionately reduced to conform with the rent fixed by Government by the notification issued under section 15(1). Otherwise, the right of the tenants to claim from the landlords the full quantity of manure or seed according to the may usage or agreement is saved by section 26.

Sd/-D.V.Vyas

Remembrancer of Legal Affairs.

U.B. to R.D., No. 730, dated the 21st January 1947.

S.A.K.
18-8
4 copies

R. I. No. 382 dated 13-1-1947.

Submitted with reference to R.D. note dated 9-1-47 at p. 5.

2. Please see the letter of the Collector of Kolaba dated 16-12-1946 at p. 3 and the Endorsement of the Commr. S.D. thereon.

3.. The question raised for the consideration of the R.L.A. is whether a Civil Judge (Junior Divi Division) can be empowered to exercise appellate jurisdiction under section 12(3) of the Bombay Tenancy Act, 1939 (Bom. XXIX of 1939).

4. Section 12(3) of the Tenancy Act lays down that any party aggrieved by the decision of the Mamlatdar under sub-section (2) may, within two months from such decision, file an appeal before the First Class Subordinate Judge, within whose jurisdiction the land is situated. As the statute has specified the First Class Subordinate Judge as persona designata, the maxim "Designation unius est exclusio alterius et expressum e facit cessare tacitum" would apply and the jurisdiction of the Second Class Subordinate Judge is excluded. It will not therefore be possible to empower a Civil Judge (Junior Division) to exercise the appellate jurisdiction under section 12(3). In fact under the scheme of the Act the Civil Judge Junior Division) has not been empowered to exercise any powers under the Tenancy Act.

5. If the number of appeals at Alibag is considerable the R.D. may consider whether the Civil Judge (Senior Division) at Thana may be asked to hold his Court for some days Alibag. The necessary orders can be issued for the purpose under section 23 of the Bombay Civil Courts Act, 1869 (XIV of 1869.).

Sd/-
14-1-47.

Office of the R.L.A.

The empowerment of the Civil Judge (Junior Division) to hear appeals from the decisions of the Mamlatdar under sub-section (2) of section 12 of the Bombay Tenancy Act. 1939. can be done only by suitably amending sub-section (3).

Sd/-D.V.Vyas

Remembrancer of Legal Affairs.

XXXX U.O.R. to R.D. No. 767. dated the 21st January 1947.

S.A.K.
18-5
4 copies

R.I.No. 120 dated the 4/6-1-47.

Submitted.

This and the reference kept below may be considered as linked cases. R.D. states in its note dated 23-12-46 at pp. 9-11 ante that the crop share payable as rent by a tenant is relatable to the actual produce of the land during a ~~f~~ cultivating season ending on the 31st March of each year. Accordingly all the crops grown in the land during a cultivating season have to be taken into account for purposes of determination of rent. The paddy straw referred to ~~f~~ by Mr. Dabke forms part of the crop grown on land and as such has to be included in the ~~total~~ total produce of the land for purpos of determination of rent." H.M. (R) in his marginal minute dated 28-12-46 states that 3 will be in relation to the crop or crops to which ~~f~~ or the other previous share related e-g-if the share taken so far was in respect of the main crop only $\frac{1}{3}$ should be of the main crop only. The Secy. R.D. refers to the discussion which the Under Secy. had with the A.L.R. and requests the R.L.A. to confirm H.M.'s interpretation.

S.A.K.
15-5
4 copies

Office of the R.L. A.

Attention of the Revenue Department is invited to the R.L.A's recent opinion dated the 16th January 1947 which covers the point in question.

Sd/- D.V.Vyas

O.C.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 817, dated the 22nd January 1947

Mjr/30/8/

4 Cs.

R.I. No. 383 dated 13-1-47,

Submitted.

2. Please see R.D. note dated 7-1-47 at pp. 3-5 ante. Certain points are raised by Mr. Mandlik M.L.C. in an article in the "Kesari" of 20th December 1946. R.D. has noted on all the points fully. The opinions referred to by R.D. are presumably put up by B Br. The Secy. R.D. has forwarded the papers to the R.L.A. particularly on the points of share of produce which was separately referred to him.

3. In the draft Press Note at p. 7 ante it is stated that in view of the G.R.R.D. No. 1140/45-F, dated 25-11-46 tenants arefrom the year 1946-47 legally liable to pay rents not in excess of 1/3 or1/4 of the share of the crop of Jirayat or irrigat lands, as the case may be, or the rents agreed upon, whichever is less. This appears to be the correct view. As stated by the U.S.R.D; at p. 6 ante, crop would mean not only the 'grain' produce but other things such as straw or 'kadab' but this is to be decided according to the usage (cf. sec. 26 of the Act.) The reply in this case will be the same as in the linked file. But if the Press Note is to be scrutinized it may be done in B Branch as that branch is scrutinizing the pamphlet.

Mjr/30/3/

4 Cs.

Office of the R.L.A.

The point raised in this case is covered by the R.L.A.'s opinion, dated the 16th January 1947, to which attention of the Revenue Department is invited.

Sd/-D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 519 dated the 22nd January 1947.

S.A.K.
18-5
4 copies

Though both sections 3 and 4(1) of the Bombay Tenancy Act, 1939, define the expression "protected tenant", the difference between the two sections is that while the former seeks to include tenants who actually held the land continuously for a period of not less than six years immediately preceding 1st January 1938 or 1st January 1945, as the case may be, and cultivated such land personally during such period, the latter section seeks to apply to the tenants who having held the land and cultivated personally continuously for a period of not less than six years immediately preceding 1st April 1937 or 1st April 1944, as the case may be, were evicted by the landlord on or after such date, otherwise than by order of a Court on any of the grounds specified in section 5(2). In short, section 4(1) seeks to apply to tenants who having held the land and cultivated them for a continuous period of six years upto the dates ~~p~~ specified, were ousted by the landlords after that period so as to deprive them of their rights and privileges as tenants. All that Explanation I to section 7 provides is that in cases falling under clauses (a) and (b) section 4(1), any notice of eviction given by the landlords prior to the commencement of the Bombay Tenancy Act, 1939, or prior to the commencement of Bombay Tenancy ~~Amtxxx1939x~~ (Amendment) Act, 1946, to protected tenants (i.e. tenants referred in section 4(1)) shall not be deemed to be a valid notice for purposes of sub-section (1) of section 7. This Explanation I follows as a corollary to section 4(1). As stated above, if it is intended to evict protected tenant falling within the scope of section 3, that is, a tenant who still continues

to hold the lands, the only course open to the landlord is to give notice under section 7(1). But as in the case of a protected tenant falling under section 4(1), an notice must presumably have been given by the landlord prior to the commencement ~~been given by the landlord prior to the commencement~~ of the Bombay Tenancy Act, 1939 or the Amending Act of ~~19~~ 1946, as the case may be and as it is intended to save the rights of such protected tenants, it is specifically provided that such notice given prior to the commencement of the said Acts will not be deemed to be a valid notice for purposes of section 7(1). The object underlying section 4(1) does not appear to have been properly appreciated by the Law Academy and hence the reference. The Explanation 1 to section 7 correctly refers to section 4(1) and is in no way incongruous with that provision. The view expressed by the Law Academy that it should refer to section 3 is not correct.

Sd/-D .V.Vyas

Remembrancer of Legal Affairs.

U.R. to R.D. No. 1587, dated the 15th February 1947.

S.A.K.
18-8
4 copies

Submitted with reference to the R.D.Notes at pp. 5-6 ante.

2. By G.M. R.D.No. 1140/45-F. dated 23-11-1946, issued in exercise of powers conferred by sub-section (1) of section 15 of the Bombay Tenancy Act, 1939, the maximum rent payable by tenants has been fixed at 1/4th of the crop or its value or the rent agreed upon, whichever is less, in the case of "Irrigated" lands and 1/3rd in the case of "other lands." The Collr. of Kolaba states in his letter at p. 3 ante that there is some disagreement on the question whether the "Bagayat" (Garden) lands in the Kolaba District should be classed as "Irrigated" lands for the purposes of the above notification. Since the terms "Bagayat" lands and "Irrigated" lands have not been defined anywhere, the Collr. thinks that "Irrigated" lands would include "Bagayat" lands i.e. lands where crops, fruits etc., are grown by supplying water artificially from canal, channel, well, river or tank. The U.S.R.D. has pointed out that for survey and settlement purposes the agricultural lands are divided into three classes viz. (i) Dry Crop (ii) Rice and (iii) Garden (Bagayat) and that since "Irrigated" lands are those that do not fall within the category of "Dry Crop" but are those that are actually "Irrigated" by any artificial or natural means, "Bagayat" lands will, as presumed by the Collr. of Kolaba, fall within the class of "Irrigated" lands. Secy. R.D. , agrees with the above view-observing that "Irrigated" lands for the purposes of sec. 15 of the Bombay Tenancy Act, 1939, are those which are artificially watered, irrespective of their survey classification. The R.L.A. is requested to confirm the R.D. view.

S.A.K.
18-6
4 copies

Office of the R.L.A.

Seen and returned.

The view expressed by the Secretary, Revenue Department, in his note dated 10-2-47, is correct.

Sd/-D.V.Vyas

Remembrancer of Legal Affairs.

U.R. to R.D., No. 2919, dated the 26th March 1947.

S.A.K.
18-8
4 copies

Office of the R.L.A.

It is presumed that the question raised for the consideration of the R.L.A. is whether in cases where the liability to maintain and repair the outer bunds of demised lands is that of the landlord and he fails to do so, the tenant can repair the bunds and recover the costs from the landlord.

2. Section 26 of the Bombay Tenancy Act, 1939, says that no provision contained in this Act shall be construed to limit or abridge the ri hts or privileges of any tenant under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a court or otherwise however. The latter part of the section is not applicable as no lease is forthcoming. There is no right or privilege in the tenant under any statute for being re-imbursed for the costs of repairs of the bunds. The provisions of Chapter V of the Transfer of Property Act relating to leases have not been applied to agricultural leases (see section 117 of the Transfer of Property Act); and, therefore, the right of the lessee under section 108(f) of that Act would not be available to the tenant in this case. The principles of English law, as reproduced by this and other clauses of section 108 and other sections in Chapter V, have, however, been applied in a number of decisions to agricultural leases. The provision in clause (f) of section 108 reproduces the principle of English law (see p. 713 of Woodfall's Law of Landlord and Tenant). The covenant to repair a sea-wall, not parcel of the demised premises, which are near the sea, but necessary to protect them from encroachment by the sea is a covenant running with the land (ibid p. 556). But in the reported decision decision the

principles of English law have been applied in the absence of special reasons and as rules of justice, equity and good conscience. The landlord may successfully contend that the reduction of rent accomplished under section 15 is a sufficiently strong reason for excluding the application of the above principle, and that it would be inequitable to burden him with the liability of repairs while depriving him of the benefit of rent. Subject to that qualification, it is possible for the tenant to assert his ordinary right under the general principles which has been preserved under section 26. He can also establish such right of re-imbursementif usage sanctions it. In both cases it would be open to the tenant to carry ex out the repairs and claim the costs thereof wither by reduction from the rent or by a regular suit.

Sd/-P.M.Lad
15-5-1947.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 5009, dated the 16th May 1947.

S.A.K.
18-8
4 copies

It is presumed that the question raised for the consideration of the Remembrancer of Legal Affairs is whether in cases where the liability to maintain and repair the outer bunds of demised lands is that of the landlord and he fails to do so, the tenant can repair the bunds and recover the costs from the landlord.

2. Section 26 of the Bombay Tenancy Act, 1939, says that no provision contained in this Act shall be constructed to limit or abridge the rights or privisons of any tenant under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a court of otherwise howsoever. The latter part of the section is not applicable as no lease is forthcoming. There is no right or privilege in the tenant under any statute for being re-imbursed for the costs of repairs of the bund. The provisions of Chapter V of the Transfer of Property Act relating to leases have not been applied to agricultural leases (see section 117 of the Transfer of Property Act); and, therefore, the right of the lessee under section 108 (f) of that Act would not be available to the tenant in this case. The principles of English law, as reproduced by this and other clauses of section 108 and other section in Chapter V, have, however, been applied in a number of decisions to agricultural le ases. The provision in clause (f) of section 103 reproduces the principle of English law (see page 713 of Woodfall's Law of Landlord and Tenant). The covenant ~~xxx~~ to repair a sea-wall, not parcel of the demised premises, which are near the sea, but necessary to protect them from encroachment by the sea is a covenant running with the land (ibid page 556). But in the reported decision the principles of English law have been applied in the absence of special reasons and as rules of justice, equity and good conscience. The landlord may successfully contend that the reduction of rent accomplished under section 15 is a

is a sufficiently strong reason for excluding the application of the above principle, and that it would be inequitable to burden him with the liability of repairs while depriving him of the benefit of rent. Subject to that qualification, it is possible for the tenant to asse-rt his ordinary right under the general principles which has been preserved under section 26. He can also establish such right of re-imbursement bf usage sanctions it . In both cases it would be open to the tenant to carry out the repairs and cla'm the costs thereof either by reduction from the rent or by a regular suit.

Sd/-/P.K.Lad

Remembrancer of Legal Affairs.

W.R. to R.D. No. 5009, dated the 16th May 1947.

S.A.K.
18-8
4 copies

L.D.R.I.No. 3907
-1/4/47.

Submitted.

Please see application from the residents of the village Adven, taluka Chiplun in Ratnagiri at pp. 1-3 ante. R.B. proposes to reply the petitioners in terms of the draft letter at p. 9 ante. The R.L.A. is requested to see the draft before issue.

2. The petitioners contend that the provisions of section 8 of the Khoti Settlement Act, 1880 conflict with sections 12, 14A or 15 of the Bom. Tenancy Act, 1939 and therefore the former prevails over the latter. R.D. is of the view that they do not conflict. Under section 8 of the Khoti Settlement Act, 1880 of the tenants other than permanent tenants continue to hold lands subject to such terms and conditions as may have been or may hereafter be, agreed upon between the Khot and themselves and in the absence of any such specific agreement--- liable to pay rent to the Khot at the same rates as are paid by permanent tenants in the village in which the lands held by them are situate. Provided that the said rates shall not exceed the maxima prescribed in section 33(1), clause (c). It is true that in the absence of an agreement the ordinary tenants are liable to pay rent to the Khot, but it is at the same rate as are paid by permanent tenants. But it cannot in any case exceed the maxima prescribed in section 33(1) clause (c) of the Act. But under the obstante clause contained in Rule VI under

S.A.K.
20-8

clause (c) of sub-section (1) of section 33 the tenant is entitled to apply for the benefit of reasonable rent under sections 12 or 14A, as the case may be, of the Bombay Tenancy Act, 1939 and with effect from the Commencement of the ensuing year, but it will be payable by the tenant in lieu of rent hitherto payable by him. The provisions of section 8 of the Khoti Settlement Act do not conflict with the provisions of sections 12 or 14A or 15 of the Bombay Tenancy Act. The view taken in para 1 of the draft letter at p. 9 ante appears to be correct. (cf. R.L.A.'s Opinion No. 4867, dated 13-5-47)

3. The petitioners further contend that section 33 of the Khoti Settlement Act the commutation rent rate fixed under the section is to apply to the rent due for the year 1947-48 and that sections 12, 15 and 15A of the Bom. Tenancy Act do not defer the application of the reasonable rent to the next year. Thus, according to them, there is a conflict and section 33 prevails. This does not appear to be correct. Rule VI under clause (c) of sub-section (1) of section 33 of the Khoti Settlement Act, 1880 provides that " the rent so determined under that Act shall, with effect from the commencement of the next year ensuing revenue year, be payable by the tenant in lieu of the rent hitherto payable by him. ". It is true that sections 12, 15 and 15A of the Bom. Tenancy Act, 1939 do not say from what year the reasonable rent shall be paid; but it is unnecessary to make such a provision. These sections only provide for fixing of reasonable rent payabele by the tenant. Thus it does not appear th at these sections in any way conflict with the provisions of Rule VI

under clause (c) of sub-section (1) of section 33 of the Khoti Settlment Act. The view taken by R.D. , in para 2 of the draft letter, appears to be correct. The papers may be"seen and returned."

Sd/-P.S.Nadkarni
15-5

A.S.

Office of the R.L.A.

Seen and returned.

Sd/-P.M.Lad
19-5

Remembrancer of Legal Affairs.

U.R. to R.D., No. 5110 dated the 19th May 1947.

S.A.K.
20/5

The Record of Rights (with is V.F.VII proper) is maintained under section 135B of the Bombay Land Revenue Code, whereas the Register of Mutations (which is V.F.VI) is maintained under section 135D.. Under section 3A of the Bombay Tenancy Act, 1939 "every tenant shall, on the expiry of one year from the date of the coming into force of the Bombay Tenancy (Amendment) Act, 1946, be deemed to be a protected tenant for the purposes of this Act and his rights as such protected tenant shall be recorded in the Record of Rights, unless his landlord has within the said period made an application to the Mamlatdar within whose jurisdiction the land is situated for a declaration that the tenant is not a protected tenant." For recording the rights as a protected tenant under this section, it is unnecessary to make any entry in V.F.VI. It would be sufficient to make the entry in the Record of Rights proper, i.e. V.F.VII, under the head "Other rights." Section 135D is not, therefore, attracted at all. It is not also necessary to issue a notification under section 135B(2) since section 3A of the Bombay Tenancy Act authorises the making of the entry straight away into the Record of Rights, and t o that extent, being a later Act, supersedes the provisions of section 135B(2).

I am afraid that the instructions in sub-para (b) of para 3 of the Circular No. 1140/45, dated the 19th November 1946 are not quite in accordance with law. The instructions were to the effect that the village officers must immediately enquire whether the person cultivating any lands is a tenant within the meaning of section 2A and enter him as such in the Record of Rights and inform the landlord. Entry in the Record of Rights at that stage is not authorised by law. The proper procedure should have been to make an entry in the Tenancy Register, so that the landlord and the tenant would have got

notice that the tenant was being recognised as such and the landlord could have taken suitable steps, and within the prescribed period, for getting a declaration of the kind contemplated by section 2A. Now that the period of one year after coming into force of the Bombay Tenancy (Amendment) Act, 1946, is about to expire, I would suggest that the best course would be to require the Mamlatdars to supply to the village officers information about applications made by landlords for declarations either under section 2A or unde r section 3A. Excepting the tenants in respect of whom such applications have been made and not decided against them, the tenants who have so far been entered in the Tenancy Register, or following the instructions in sub-para(b) of para 3 of the Circular No. 1140/45, dated 19-11-1946 in the Record of Rights, may then be transfered to the Record of Rights straightaway as protected tenants under section 3A of the Bombay Tenancy Act. This would exclude the possibility of village officers corruptly or fraudulently entering in the Record of Rights as protected tenants persons who may not have even made a claim to be called tenants. This would also avoid the elaborate procedure of entering in V.F.VI or in the Register of disputes case of tenants whose claim to tenancy or to protected tenancy is being challenged by the landlord. Such Tenants may of course be continued in the Tenancy Register if they are otherwise cultivatin the land, until the claim is finally decided.

Sd/-P.M.Lad
3-6

Remembrancer of Legal Affairs.

U.R. to R.D.NO. 5807, dated the 2nd June 1947.

S.A.K.
20-6
4 copies

Submitted.

2. Please see para 4 of H.M.(B)'s note dated 15-5-1947 at pp. 1-8 ante. In para 3 of the draft ste circular at pp. 11-15-ante it is stated ase follows:-

"Disputes arise as to the places of threshing the crops and of payment of rental to the landlords. The legal position in this matter is :

i) If there is any agreement, usage or custom as to the places where a tenant should take the cr-ops for threshing and the places for payment of rental to the landlords, the agreement, usage or custom, should prevail.

ii) If there is no agreement, usage or custom, a tenant is under no obligation to take the crop to a common threshing floor or to the one belonging to the landlord and the tenant will be within his ownn rights to take the crops to his own threshing floor and to give the prescribed share (s) to the superior holder(s) at such threshing floor."

The R.L.A. is required to advise very urgently whether the view exp ressed in this para is correct.

3. Section 26 of the Bom. Tenanct Act, 1939, provides that no provision contained in that Act shall be construed to limit or abridge the rights or ~~privile~~ privileges of any tenant un der any usage or law for the tim being in force or arising out of any contract, grant, decree or order of a Court or otherwise howsoever. Under this s section if according to the usage or ~~af~~ agreement the tenant is required to take the crop for threshing to a common thres -shing floor or to pay the rental at such a place then he is under an obligation to take the crop to that p lace. Otherwi -wise he can take the crop to his own threshing floor and gi give the prescribed ~~shareland~~

shares to the landlord at such threshing ~~fmkx~~ floor. The view
of
R.D., in para 3 ~~&~~ the draft circular, at pp. 11-15 ante,

appears to be correct.

Sd/-P.S.Nadkarni.
9-6

A.S.

S.A.K.
20-8
4 copies

Office of the R.L.A.

Seen and returned.

The view expressed by the Revenue Department in paragraph 3 of the draft circular, at pp. 11-15 ante, is correct.

Sd/-P.M.Lad
16-6

Remembrancer of Legal Affairs.

U.R. to H.D., No. 6058, dated the 10th June 1947.

S.A.K.
20-6
4 copies

Office of the R.L.A.
R.I.No. 8158 dt. 9-7-47.

Under section 12(3) of the Bombay Tenancy Act, 193 an appeal lies to the Court of the First Class Subordinate Judge. To provide for the defence of such appeal, condition (a) at p. 32 ante has been slightly amended in pencil. Subject to this, the instructions drafted by the Revenue Department are legally in order. The view taken by R.D. in paragraph 4 above is correct.

Sd/- D.V.Vyas 11-7-47.

Secy. R.D.
H.M.R.D.

S.A.K.
20-8
4 copies

Office of the R.L.A.

1. The view expressed in paragraph 2 of Secretary, R.D.'s note is confirmed.

2. The question raised in paragraph 3 of Secretary, R.D.'s note is whether the period of a year's notice mentioned in secti n 7(1) of the Bombay Tenancy Act, 1939 runs from 31st March only according to the definition of a year given in section 2(12) of the Act.

3. Section 7(1) of the Bombay Tenancy Act, 1939, provides for determining the tenancy of a protected tenant by giving him one year's notice. One year's notice means one clear year (see Subadini v. Durga Charan 28 Cal. 118). "Year" as defined in section 2(12) means the year ending on the 31st March or on such date as the Provincial Government may by notification, appoint for any locality. Consequently one year's notice to be v alid must expire on 31st March although there is an interval of more than one year between the date of notice and the date of the required surrender of possession. A year's notice may be of a longer duration than one year, but what is essential is that it must expire on 31st March (see Bijay Chandra V. Howrah Amth Py. Co. 38 C.L.J. 177: Mitra's Transfer of Property Act, 6th edition , p. 588). Consequently it is not necessary that the period of notice must run from 31st March. It is sufficient if the interval between the d ate of notice and the date of determination of the tenancy is one clear year and the notice expires on 31st March that is to say, requires the tenancy to quit on 31st March.

Sd/-D.V.Vyas

Remembrancer of Legal Affairs.

U.H. to R.D., No. 7454, dated the 19th July 1947.

S.A.R./ 20-8/4 C/

Office of the R.L.A.

Mr. R.A.Kulkarni, M.L.A., has raised certain technical points at pages 3 to 7 ante under the Bombay Tenancy Act, 1939, and the R.L.A. is requested to express his opinion thereon.

Para. 1 at p. 3 ante:-

It is not correct to say that section 2A of the Bombay Tenancy Act, 1939, defines the term "tenant". What that section does is to widen the scope of the definition of that term in section 3(14) of the Land Revenue Code, 1879 (see section 2(13) of the Bombay Tenancy Act). A mortgagee with possession can claim to be a tenant under section 2A even after the redemption of the mortgage unless the mortgagor has applied within one year under sub-section (1) for a declaration that the mortgagee is not a tenant. No amendment of section 2A appears necessary.

Para 2:-

"he Transfer of Property Act does not define the term "tenant". Nor do the provisions of Chapters V thereof relating to leases apply to leases for agricultural purposes. The question whether the definition of "tenant" in section 2A of the Bombay Tenancy Act, is inconsistent with the definition given in the Transfer of Property Act, does not therefore arise.

Para. 3:-

Whether the rights of the tenant B are affected after the termination of his landlord A's interest would depend upon the nature of interest terminated. If A's interest is purchased at an auction, it amounts to the transfer of his interest to the auction purchaser and such transfer would be subject to all rights and equities. Consequently the tenant's rights would in no way be affected by the auction

sale. The case of a lease by a widow is different. On her death the land reverts to the heir free from all encumbrances. Consequently it would be possible for the heir to contend that he would not be bound by the tenancy created by the widow. The general principle contained in clause (c) of section 111 of the Transfer of Property Act may apply in such a case.

Para. 4 at p. 4 ante:-

Mr. Kulkarni appears to contend that there is no provision in the Bombay Tenancy Act, requiring the tenant to be faithful to his landlord. As long as the tenant pays the rent to his landlord he can be deemed to be faithful to his landlord and if he ceases to pay or makes default in payment of rent he can be evicted. The rights of the landlord are well protected and there can be no apprehension of the tenant attorneying to a third person. There is substance in the contentions raised by Mr. Kulkarni in this connection.

Paras. 5 and 6:-

The points raised are for the administrative department to decide.

Para. 7 at p. 5 ante:-

Mr. Kulkarni contends that there is no penalty imposed on the tenant for failure to pay the rent regularly and punctually to the landlord. Section 5(2)(b) which provides for the penalty of termination of tenancy in the event of failure to pay the rent regularly seems to have escaped the notice of Mr. Mxxx Kulkarni.

Paras. 8 and 9 at p. 4 ante do not raise any legal point.

S.A.K.
20-8

Paras. 10 and 11:-

The tenancies created by the receiver or the Deputy Nazir in charge of the estates of minors will continue to be operative even after the management by such authority is terminated.

Sd/-D.V.Vyas.

Remembrancer of Legal Affairs.

U.R . to R.D.No. 7450. dated the 19th July 1947.

S. A.E.
20-7
$ 4 Copies

Office of the R.L.A.

It appears that some agricultural lands were requisitioned under Rule 75A(1) of the Defence of India Rules subject to certain conditions one of which is as follows:-

> "The property shall be restored to the owner as far as possible in the same condition in which it was on the date on which x x x was put in possession and if the property has deteriorated as a result of the use to which it has been put by the authority requisitioning it compensation shall be paid in respect of the deterioration:
>
> Provided that nothingin this condition shall apply to any structures, trees or crops standing on the land comprised in the property on the date on which possession was taken an d in respect of which compensation hasbeen paid".

The Revenue Department has made the following proposals in respect of the payment of compensation for deterioration of the dorequisitioned lands and having regard to the nature of tenancies. i;e. permanent, protected or 10 years tenancies:

(a) As regards permanent tenants the restoration compensation will be wholly payable to them. The Collector should pay the tenant compensation on his executing an agreement with an indemnity clause that he should carry out the repairs within a reasonable time failing which he would be liable to refund the amount. If the tenant refuses to accept payment subject to the aforesaid condition, it may be offered to the landlord on the same condition. If he also refuses, the Collector may deposit the amount in the treasury and ask them to obtaina the court's order regarding the ~~and ask them to obtain the courts regarding the~~ allocation of the sum between them.

(b) As regards protected tenants it appears that the landlord may get whole amount and agree to restore the land to its original, original condition within a ~~xxxxxxxxx~~ reasonabl specified manner. He should be asked to pass a bond to that effect. If he is not willing to accpet this conditional payment the Collector may make a similar offer to the tenant. This is reasonable because the landlord can insist on ~~This (the Collector may make a similar offer to the tenant.~~ payment of the original rent. If the tenant also refuses to

accept the offer the Collector may deposit the money in the treasury and ask theparties to move the court for its allocation between them.

(c) As regards a ten years' tenant the position is similar to that of a protected tenant.

(d) In the case of lands which have become thoroughly unfit for cultivation the military authorities should be requested to acquire them or to apy the capitalised value of their assessment in addition to restoration compensation payable to the landlords and tenants.

(e) The compensation in respect of the injured trees and fences etc. should be paid to the person who reared the trees or erected the fence on his executing an indemnity bond from him failing which the parties should be asked to move the court.

The R.L.A. is requested to advise whether the aforesaid proposals are in order.

The dominant object underlying these proposals prima facie appears to be to enforce the restoration of the deterioratdclands to their former ϕ condition by requiring the payees to spend the compensation amount over their repairs; this object is good so far as it goes in the larger interest of the community. But the main difficulty is aboumt the power of Goveramnent to make such conditional payment. According to the condition subject to which the requisition was made Government is bound to pay compensation to the owner for deterioration of the requisitioned land; but there is no stipulation that such compensation should be utilised by the owner to restore the deteriorated land to its former condition. Consequently the proposal to offer compensation on condition of carrying out the repairs would not be legally feasible. If Government is keen, as they seem to be, on developing these lands by using the compensation amount, it would be open to Govt itself to carry out the repairs before restoring the lands to the owners. Whether this would be feasible it would — be for the administrative Department to decide

The next question for consideration is whether the landlord or the tenant or both would beentitled to

compensation and how it should be apportioned between them. It is true that the requisition order provides for payment of compensation to the owner. But in his opinion No. 32 of 1945 the Advocate General has opined that the requisition order does not put an end to the tenancy and that the tenancy remains undisturbed during the period of requisition ing. If so, "owner" in the requisition order would mean person or persons who have an interest in the requisitioned land and exfacie that term would include both landlord and tenant. Consequently the compensation will have to be paid both to the landlord and tenant. But how it should be approtioned between them is a difficult problem. The decisions of various High Courts on the point of apportionment of compensation for the acquisition of agricultural lands under section 30 of the Land Acquisition Act, 1894, may be useful in this respect. In the Collector of Dacca v. Golam Ajam Chaudhari (A.I.R. 1936 Cal. 688) it was held

[There is no general rule applicable to apportionment between a landlord and a tenant with a permanent right of occupancy, what is some times called a rough and ready method has to be adopted taking into consideration all the circumstances of the case. The broad general principle is the same namely that the loss of the landlord is the rent which the raiyat pays and the loss of the raiyat is the value of the produce the gets less his rent and cost of cultivation". In Sham Lal v. Collr. of Agra (A.I.R. 1934 All. 239) it was held:

> "Whether the agricultural land of a Zamindar over which the tenant has occupancy rights is acquired by Government the compensation allowed should be apportioned in the rates of 10:6 as between the Zamindar and the tenant".
>
> " This rough and ready rule is not to be accepted as any rule of law but as a rule of practice".

In Bommadevara Venkat V. Subbarayandu where the position of the landlord was not so advantageous as in the Allahabad case the raiyat was given three-fifths and the landlord two-fifths. In Gordon Stuart & Co. v. Mahatpp Chandra Buhadur (1863, I Marshall's Rep. 490) it was held:

"Where lands are taken compulsorily the principle upon which the amount of compensation is divisible among the Zamindar and the holders of several subordinate tenures, is by ascertaining the value of interest of each holder of a tenure and to give him a sum equivalent to the purchase money of such interest".

Applying these principles to permanent tenants, protected tenants and 10 years' tenants who would be entitled to compensation some rough and ready method based on the valuation of the rights of landlords and these tenants for the apportionment of compensation may be evolved and the compensation offered accordingly; and in case either or both of them refuse to accept the apprortioned amount the amount may be deposited in the Government treasury and they be asked to go to Court.

The view taken by the Revenue Department in respect of the proposals (d) and (e) is correct.

Sd/- D.V.Vyas

O.C.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 7384

Dated the 17th July 1947.

Mjr/30/8/

BtCs.

The facts are as follows:-

The grass area in ~~kal~~ block No. III of Chanchpar village of Mehlol Estate was sold every year by public auction and the average sale proceeds amounted to Rs. 310 per annum. The successful bidder ~~used~~ had also to supply 65000 lbs. of grass to the estate at Rs. 5 per thousand lbs. In 1935-36, the grass was given on a half share system by private negotiations to one Patel Lallubhai Mathurbhai of Harkundi~~xxxxx~~ a village in the same estate. It is reported that he had sustained a loss of Rs. 180 by that transaction.

Next year, on receipt of applications of Lallubhai Mathurbhai and Bhikhabhai Kanchhodbhai for the lease of the land, the Japtidar of the Mehlol Estate reported the facts to the Collector who under his No. W.R.D./M.H.L.- 720 , dated 20th June 1936 ordered the land measuring 150 acres out of 291 acres 9 Guntha of Block III to be put to public auction at an upset price of Rs. 150 for one year subject to the condition that the intending bidder shall have to supply 50000lbs. of grass to the estate stables free of charge and the deposit of Rs. 1000. The auction was held on 6th July 1936 but none offered a bid owing perhaps to the condition of a yearly lease. The Japtidar therefore recommended disposal subject to some guarantee not to disturb the possession and to put the land to auction subject to that condition. The Collector (Mr. Mani) was not in favour of the permanent disposal of land; he therefore asked the Japtidar to inquire if Mr. Lallubhai was willing to take up the area on the conditions previously recommended by him with the modification that the period should be of ten years. Lallubhai agreed to it. The Collector therefore reported under his No. W.R.D./M.H.L.- 720, dated the 23rd October 1936-

to the Commissioner recommending the proposal of the lease of 150 acres of land out of the total area of 291 acres 9 gunthas of Block III for ten years to Patel Lallubhai Mathurbhai on payment of an annual rent of Rs. 150 and the supply of 65000 lbs. of grass to the estate stables. The Commissioner, N.D. was not satisfied with this method of disposal of the land in question but as the season was far advanced and no bid was forthcoming when the lands were auctioned for one year he agreed to the 10th year lease under office No. W.R.D.-16 (III), dated 11th October 1936 and the Collector accordingly issued orders in his No. W.R.D./N.d.L.- dated 13th November 1936 and drew up a 11 lease on 14th December 1936.

After the disposal of the said land some persons applied to the Collector for lease of the said land, but their requests were refused. One Thakor Dalpatsinghji appealed to Government against the order of the Commissioner, N.D. Government however, rejected the appeal of Thakor Dalpatsinghji and requested the Commissioner, N.D. to instruct the Collector of Broach that as the lessee was not himself cultivating the land, the lease should not be renewed on the expiry of its term, and that the land be leased out in blocks of 30 to 40 acres to actual cultivators by public auction.

In 1946, Patel Kishorbhai Lallubhai, son of Mr, Lallubhai, applied for renewal of the lease for a further period of 10 years on the terms mentioned in the letter from the Collector of p Panch Mahals No. W.R.D.S.- 1207, dated the 31st May 1946. In his letter No. W.R.D.- 343, dated 26th February 1947 the Collector of Panch Mahals states as follows:-

S.A.K.
20-8
4 copies

"Now the Bombay Tenancy Act, 1939 has been applied to the rest of Panch Mahals (in which Mehlol Estate is included) from 11th April 1946. The lands in question have been leased to the applicant from the year 1937-38 and hence he is a protected tenant. He cannot, therefore, be evicted from the land on expiry of the period of lease, which expires on 31st March 1947. Also according to section 23 of the Bombay Tenancy Act, no lease of any land shall be for a period of less than 10 years. The growing of grass is agriculture as defined in section 2(1) of the Bombay Tenancy Act as amended by Act XXVI of 1946. In view of the above I would have extended the lease by 10 years more from 1948-49 but this involves modification of orders contained in Government endorsement No. 7323-R/37, dated 16th October 1937 and hence orders in view of the provisions of the Bombay Tenancy Act may be passed. As the period of lease expires on 31st March 1947, orders may be passed early. As however, the applicant is entitled to benefit under the Bombay Tenancy Act, 1939, I am issuing orders to the Jagtidar of Mehlol not to evict the applicant if Government orders are not received before 31st March 1947".

In his endorsement No. W.R.D. 16, dated 29th March 1947 the Commissioner, N.D. observes as follows:-

"In view of the provision made in sub-section (2) of section 25 of the Bombay Tenancy Act, the Act shall not apply to the present case. As, however, the matter is not free from doubt, orders of Government are solicited."

With regard to the above remarks of the Commissioner, N.D. the U.S., H.D. inter alia states as follows:-

"In may 1936, the lessee applied for further lease of 10 years of 150 acres of cultivated land. The Collector reported that the lessee cultivated this land personally.

S.A.E.
20-5

through servants. If the question of lease is restricted to 150 acres of cultivated land, which forms part of a larger area of bir land, it is probable that the lessee may claim rights of protected tenancy of 150 acres and it is perhaps on this account that the Commissioner, N.D. now considers that the lease of the entire area of 291 acres does not come within the purview of the Tenancy Act".

The R.L.A. is requested to advise whether the view so expressed by the C.S., N.D. is correct.

From the terms of the lease dated 14th December 1936 it will be seen that 150 acres of land out of the total area of 291 Acres and 9 Gunthas of the bir land was taken on lease for cultivation on payment of annual rent of Rs. 180. (vide condition (1)). The lessee further agreed to send 65,000 lbs. of grass out of the remaining land measuring 141 Acres and 9 Gunthas (i.e. other than 150 acres to be cultivated as specified in condition 1) to the Durbargadh of Thakur Saheb every year before 31st January (vide condition (3)). In condition (4) it was also provided: "We shall not also cut the prickly pears which would hinder the growth of grass in the reserved area of 141 Acres and 9 Gunthas without the permission of the Forester". Reading conditions (1), (3) and (4) together, it would appear that the lease also included 141 Acres and 9 Gunthas of land in which grass was grown.

It follows therefore that Mr. Lallubhai held the whole bir land from the Court of Wards as a tenant

S.A.R.
20-8
4 copies

within themeaningof section 2A of the Bombay Tenancy Act, 1939 (cf. E.&.A.'s opinion No. 6138 dated the 13th June 1947). and as thaland was held continuously for a period of not less than six years immediately preceding 1st January 1945 and was cultivated by the tenant personally, Mr. Lallubhai would be entitled to rights of " protected tenant" under section 3 (vide also section 34(1) and under section 5(2) his tenancy cannot be ex terminated except under the circumstances stated therein even though the lease has expired; and the Government's orders probibiting renewal of leane are rendered ineffective by the Act.

It is evident that the lease was not for baf benefit of an industrial or commercial undertaking merely because the lessee was required to give 65,000 lbs. of grass free to the Darbar,had and consequently section 25(2) of the Act will have no application . The view expressed by the Commissioner, N.D. is not correct. The U.S., A.D.'s view that "the lessee may claim rights of protected tenancy of 190 Acres and it is perhaps on this account that the Commissioner, N.D. now considers that the lease of the entire area of 291 acres does not come within the purview of the Tenancy Act" is not correct. The lease was for the whole area of 291 Acres and 9 Gunthas.

Sd/-D.V.Vyas

Remembrancer of Legal Affairs.

U.R. to H.D., No. 7947, dated.the 1st August 1947.

S.A.K.
20-8
4 copies

L.D.R.I.No. 6239/27-5-47.

Submitted.

2. The Collr. of Surat in his letter, at p. 1 ante states that service inam lands is the property of Government and Patels are entitled to enjoyment so long as they serve Govt., that they hold land from Govt. and as such they are holders and the relations between the holders and tenants of such lands are those of superior and inferior holders. He is therefore of the opinion that such lands do not fall under exceptions provided in sec. 25 of the Bombay Tenancy Act, 1939 and that the provisions of the Act are applicable to such lands held by tenants who are entitled to the protection conferred by the Act. R.D. agrees with this view of proposes to reply him as in the draft letter, at p. 5 ante, after u.o.r. to the H.L.A.

S.A.K.
30-5
4 copies

Submitted.

2. Please see R.D. note at p. 75 ante. H.M.(R) has directed that paddy lands are generally non-irrigated and should be considered as such. The Collr. of Kanara and the Commr., S.D. state that lands in the Haliyal and Mundgod talukas of the Kanara District growing paddy in the monsoon months must be held to be non-irrigated lands for the purposes of section 15 of the Bombay Tenancy Act, 1939. The R.L.A. is requested to advise in the matter.

3. R.D. has referred the papers to the R.L.A. without raising any specific question as required by para. 104 of the Secretariat Instructions. Presumably the papers are shown to the R.L.A. to confirm the view taken by the Collr. in his letter at p. 71 ante. Under section 15 of the Bombay Tenancy Act, 1939, the maximum rate of rent does not exceed one-fourth of the crop or its value in the case of irrigated lands and in other cases one-third. The term "Irrigated lands" has not been defined in this Act or the Bombay Land Revenue Code, 1879. It will have therefore to be given its ordinary meaning. "Irrigate" primarily, according to the Latin word from which it is derived, to convey water to or upon anything, and, more generally to wet or moisten anything, as the ordinary definition in our language is to wet water lands, whether by channels, by flooding, ~~xxxxxxxx~~ or simply by sprinkling. (cf. Ayer's Law Lexicon p. 625). Thus it is more or less artificial watering of lands which can be brought within the term irrigated lands. The lands in Haliyal and Mundgod talukas of the

Kanara District in which paddy is grown during the monsoon months cannot be considered to be irrigated lands although they are supplied with water from tanks on the hill tops when the monsoon fails. (cf. R.L.A.'s opinion No. 2919, dated 26-3-47) It appears therefore that the view taken by the Collr. of Kanara, the Joint. and the S.M. (R.D.) is correct.

Sd/-P.S.Nadkarni
11-9

XXXXX
A.A.S.

S.A.K.
20-6
4 copies

Seen and returned.

The view taken by H.M. (F.D.) is correct.

Sd/-P.M.Lad
12-9

Remembrancer of Legal Affairs.

U.R. to R.D.No. 9214, dated the 15th September 1947.

S.A.K.
20-8
4 copies

Office of the R.D.A.

Section 20 of the Bombay Tenancy Act, 1939, provides:-

"Where any tenancy of any land held by a tenant is terminated for non-payment of rent and the landlord sues or files any proceeding to eject the tenant, the Court shall call upon the tenant to tender to the landlord the rent in arrears together with the costs of the suit or proceeding, or to give such security as it thinks fit for making such payment within fifteen days; and if the tenant complies with such direction within fifteen days, the Court shall, in lieu of making a decree or passing an order for ejectment pass an order directing that the tenancy had not been terminated and thereupon the tenant shall hold the land as if the tenancy had not been terminated."

The direction which the tenant would be required to comply with within fifteen days would be either to tender to the landlord the rent in arrears or to furnish security for payment to save the termination of tenancy. If the provision is to be construed as enabling the Court to issue an alternative direction to pay the rent in arrears within fifteen days even if the security is furnished within that period, it would not be consistent with the first alternative namely tendering to the landlord the arrears of rent, for if such tender could be made, there would arise no question of furnishing security. Consequently to avoid the inconsistency and to produce harmony it appears necessary to read the words "within fifteen days" in the first part of section 20 as governing both the alternatives namely tendering to the landlord the arrears or furnishing security for making such payment. The Court will have therefore to issue a direction to the tenant either to tender to the landlord the arrears within fifteen days or to furnish within fifteen days security for making such payment and if the tenant complies with either of them within fifteen days as aforesaid the tenancy would be saved. The view taken by the A.G. to R.P.M. appears to be correct.

Sd/-D.V.Vyas

Remembrancer of Legal Affairs.

U.R. to R.D.No. 5179, dated the 9th August 1947.

The eight-anna share of the Hebli Saranjam estate of the late Mr. Madhavrao Laxmanrao Heblikar is now under Government management under rule V(A) of the Saranjam Rules. The question raised for the consideration of the R.L.A. is whether the leases of lands of the saranjam estate during management come within section 25 of the Bombay Tenancy Act, 1939. Section 25 of the Bombay Tenancy Act, 1939, provides:

"Nothing in this Act shall apply to lands-

(1) held on lease from the Crown or a co-operative society, or

(2) held on lease for the benefit of an industrial or commercial undertaking.

The point for determination, therefore, is whether during management the lands can be said to be held on lease from the Crown. Under rule V of the Saranjam Rules, every saranjam shall be held as a life estate. It shall be formally resumed on the death of the holder, and in cases in which it is capable of further continuance, it shall be made over to the next holder as fresh grant from the Crown unencumbered by any debts or charges save such as may be specially imposed by Government itself. Under rule V(A), in cases in which there is no suitable person to whom a re-grant can immediately be made, or in which an immediate re-grant would be injurious to the interests of the estate, the saranjam may be attached and placed under Government management for such period as Government may consider necessary; and the revenue of the saranjam after deduction of the expenses of management may be assigned for the maintenance of the representatives of the deceased saranjamdar, in such manner and in such proportion as

Government may from time to time direct. The resumption under rule 5 is a formal resumption, and the intention is not to interfere with the succession, the object being to enable Government to hand over the estate unencumbered by any debts and charges: (Sakharam v. Trimbak 23 Bombay Law Reporter, 314). Under rule V read with rule II, in cases in which a saranjam is capable of further continuance, the rights of Government to resume absolutely do not fall to them until the saranjam becomes incapable of further continuance. It is only when such right accrues to Government that it will be entitled to resume the property itself. Until such an event happens, Government has no interest of its own in the saranjam: (p. 40 of Law of Saranjam by Phadnis). It follows, therefore, that the resumption under rule V and the attachment and management under rule V(A) do not vest the estate in Government ofor purposes of rights and liabilities against the estate. The leases granted by the manager must be treated as leases granted on behalf of the estate. The land is held on lease from the estate by its manager and not from the Crown direct. It is only lands which are held on lease from the Crown in the true sense of that term which were exempted from the operation of the Bombay Tenancy Act, 1939, by section 25 thereof. The H.L.A. would, therefore, endorse the view taken by the Secretary, Revenue Department.

Sd/-P.M.Lad
8-10-47

Remembrancer of Legal Affairs.

U.R. to R.D.No. 9926, dated the 10th October 1947.

S.A.R.
20-8
4 copies

Applications for determining rents. Bom. Tenancy Act. 1939 Section 12(1).

The view taken by .S. in para. 2 of its office note at pages 1345 ante is not correct. The rent payable by each tenant is required to be determined separately. The fact that there is a common landlord and the lands though leased out separately, are of the same classification would be no valid ground for including all such lands in one application for determining the rent of each land. More than one tenant can be included in such application provided the right to relief against them is in respect ~~xx~~ of or arises out of the same act or transaction whether ~~jxxxxx~~ jointly or severally or in the alternative any common question of law or fact would arise. Each lease is a separate transaction and no common question of law or fact is likely to arise in such a case. From the tenant's point of view it is necessary that each tenant should be able to represent his case separately and get his liability separately determined. Consequently there can be no joinder of all tenants in one application for determining the rent payable by each tenant for the land leased to him. There should therefore be a separate application in respect of each tenancy , but there would be no objection to linking or consolidating all such applications to facilitate hearing and to suit the convenience of parties.

Sd/-I.M.Lad
28-10

Remembrancer of Legal Affairs.

U.R. to S.D. No. 10351. dated the 29th October 1947.

S.A.K.
20-8
4 copies

It appears that there are certain unsurveyed and unsettle Inam villages in Kolaba District and the holders of lands in these villages are paying assessment to the Inamdars in kind at the rate of 9 to 11 maunds per Bigha. These holders have complained to Government that they do not get the protection of the B ombay Tenancy Act whereas their own tenants a[illegible] are to such protection with the result that what they have to pay to the Inamdars is more than what they collect from their tenants. Secretary R.D. considers that these holders of lands are as well entitled to the protection of the Bombay Tenancy Act, firstly because they are tenants as held by the Bombay High Court in the case of Sursingji v. Naram 2 Bom. L.R. 655, and secondly because they are tenants within the meaning of section 83 of the Bombay Land Revenue Code. In his own minute at page 35 H.M. (R.D.) has observed:

> "We should hold the tenancy Act applicable. If any aggrieved party goes to a Court of Law and gets our interpretation changed, Government will then consider what is to be done".

The R.L.A. is requested to advise whether these holders of lands are entitled to protection of the Bombay Tenancy Act, 1939.

Section 2(13) of the Bombay Tenancy Act, 1939 provides that words and expressions used in this Act but not defined shall have the meaning assigned to them in the Bombay Land Revenue Code, 1879. The B ombay Tenancy Act, 1939 does not define the expression 'tenant', although by section 2A, it has extended the definition of a tenant. Consequently the definition of a tenant as given in the Bombay Land Revenue Code 1879, will apply. "Tenant" as defined in section 2(14) means a lessee, whether holding under an instrument, or under an oral agreement, and includes a mortgagee of a tenant's rights with possession; but does not include a lessee holding directly under the Crown. Superior holder as defined in section 2(13) means a landholder entitled to receive rent or land revenue from o-ther landholders (hereinafter called "inferior holders"), whether he is accountable or not for such rent or land revenue, or any part

thereof, to the Provincial Government. The expression 'superi holder' is wide enough to include the term 'landlord'. The terms 'superior holder' and 'inferior holder' have reference only to payment of rent or land revenue, whereas the terms 'landlord' and 'tenant' have reference only to the origin of the right to hold. A 'tenant' has to pay to his 'landlord' and is thus an inferior holder. Besides he derives his right to hold from the man whom he pays or from his predecessor. Every 'tenant' is an 'inferior holder' but every 'inferior holder' is not necessarily a tenant (See Land Revenue Code by Mr. Gupte 3rd Edn. page 85). The holders of lands in these Inam villages are no doubt inferior holders. But it will not necessarily follow therefrom that they are tenants, because tenancy presuppeses relationship of landlord and tenant which may or amay not be present in such cases. It is true that in Sursingji v. Maran (2 Bom. L.R. 855) where the defendants were liable to the assessment and local fund to the plaintiff who held a Sanad under the Summary Settlement Act, 1863, the plaintiff was held to be a superior holder within the meaning of the sub-clause and the defendants were inlaw the tenants of the plaintiff whatever the nature of their holding might have been. But that decision appears to have no application and is no longer a good law, for it was decided in 1900 when the definition of a tenant as contained in the Bombay Land Revenue Code then existing was different from the definition of a tenant as it now exists (See page 29 of Mr. Gupte's Land Revenue Code). Section 83 of the Land Revenue Code, as it appears from the heading of Chapter VII regulates the relationship between the superior and inferior holders. But it is apparent from the provisions of that section that it regulates the rights of landlord and tenant though they are termed as superior and inferior holders. As stated above a tenant is an inferior holder but every inferior holder is not necessarily a tenant. Consequently section 83 is of little or no help to hold that the holders of lands in the present case are tenants of the Inamdar.

In an Inam village all holders of land are no doubt inferior holders but of them some may and some may not be tenants of Inamdar. Whether they are or are not tenants would depend no the fact whether they have been on the land prior or subsequent to the grant of Inam to the Inamdar. The tenant as defined in section 2(14) of the Bombay Land Revenue Code means a lessee. The expression "lessee" has not been defined in that Code and for purposes of ascertaining the implications of a lease it would be necessary to consider its definition in the Transfer of Property Act. The term 'lease' as defined in section 105 of that Act means a transfer of a right to enjoy such property, made for a certain time, expressed or implied, or in perpetuity, in consideration of aprice paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered, periodically or on specified occasions to the transferior mf by the transferee, who accepts the transfer on such terms. The transferor is called the lessor, the transferee is calledthe lessee, the price is called the premium, and the money, share, service or otherthing to be so rendered is calledthe rent. In Kally Dass Ahiri v. Monmohini Dassee (I.L.R. 24 Cal.440) Sir Lawrence Jenkins said:

> "A man who being owner of land grants a lease in prepetuity carves a subordinate interest out of his own and own interest. This result is to be inferred by the use of the word 'lease' which implies an interest still remaining in the lessor. Before the lease the owner had the right to enjoy the possession of the land and by the lease he excludes himself during its currency from that right, but the determination of the lease is the removal of that barrier, and there is nothing to prevent the enjoyment from which he had been excluded by the lease".

It is therefore clear that the lease implied that the landlord is the owner of the land and the tenant is given carved interest thereof subject to the right of the former to determine the lease as stipulated. Applying that test to the present case it appears that the holders of lands in the Inam villages are paying fixed assessment in kind to the Inamdars.

Presumably such fixation of assessment implies that these holders claim to be the owners of the lands subject to the liability of paying assessment to the landlord. If this presumption is correct, these holders cannot be considered to be the tenants of the Inamdar. It is true that by section 2A of the Bombay Tenancy Act the definition of a tenant is extended, but even then that provision clearly states that the land must belong to another person. Consequently that provision cannot be extended to these holders. It follows therefore that these holders of lands are not tenants within the meaning of the Bombay Tenancy Act, 1939 and consequently they are not entitled to the protection of that Act. Assuming that that Act applies to them the position is likely to be anomalous. Under section 5(2) the tenancy can be terminated on the ground of sub-letting. That would be an invasion of their rights to hold the lands so long as they pay their assessment to the Inamdar. In these circumstances it appears that the Bombay Tenancy Act, 1939, will have to be amended suitably if the protection of that Act is to be extended to the holders of such lands in an Inam village.

Sd/-D.V.Vyas

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8442, dated the 19th August 1947.

S.A.K.
22-8
4 copies

Right to restoration of tenancy- whether heritable
Bombay Tenancy Act. 1939.

Comparing sections 4 and 9(1) of the Bombay Tenancy Act. 1939. it would seem that the right o to restoration undersection 4(2) is more in the nature of a personal right or privilege as available only to the evicted protected tenant and not of the nature of heritable property. However, the H.L.A. does not think it advisable to give an opinion upon merely hypothetical facts. A concrete case, if and when it arises, may be separately referred for opinion.

sd/-P.M.Lad
26-11

Remembrancer of Legal Affairs.

U.R. to R.D.No. 11421. dated the 29th November 1947.

S.A.K.
22-8
4 copies

R.I.No. 12805/22-10-1947.

Submitted.

2. It appears that Mr. K.R.Shinde has applied to Government under section 28 of the Bombay Tenancy Act, 1939, against the order of the Asstt. Collr., Niphad Division, Nadik District, in Tenancy Appeal No. 4 of 1937 and has requested that the execution of the Asstt. Collr's order be stayed pending final disposal of his revision application. R.D. proposes to issue a general circular that as soon as a revision application under section 28 of the Act is preferred by any party to Govt. in any proceedings under the Act inxpreferredxd the status quo at the commencement of the dispute or proceedings should not be disturbed unless otherwise directed by Govt. Secy., R.D. says that the general practice may be that where the two lower tribunals differ, status quo ante dispute may continue and there should be no change of possession of that year's crop except in terms of and in accordance with the final decision in revision. He further says that in cases where the trial tribunal's decision was patently wrong and has been rightly corrected by the appellate tribunal, mere filing of revision application need not entitle or imply any grant of stay. The papers are shown to the R.L.A. for advise.

S.A.K.
22-8
4 copies

Seen and returned.

It is desirable that separate order-s should be issued in each case, depending upon its merits. It is not desirable to apply one general formula to all cases.

Sd/-P.N.Lad
3-12

Remembrancer of Legal Affairs.

U.O. to R.D., No. 11613, dated the 4th December 1947.

S.A.K.
22-8
4 copies

Taking of possession of surrender of lease. Bombay Tenancy Act, 1939.

It appears that a tenant Hari Bandu Wani willingly surrendered his tenancy to his landlady Laxmibai V. Marathe, who after getting possession of the land has applied to the Mamlatdar to remove the tenants name from the Record of Rights. The Collector of West Khandesh has referred the matter to Government for orders as to what course should be followed when there is a surrender of tenancy and the landlord has not obtained possession under an order of the Mamlatdar as provided in section 24(1A) of the Bombay Tenancy Act, 1939. The R.L.A. is requested to advise whether in such cases compliance with the provisions of section 24(1A) is obligatory.

2. Sub-section (2) of section 23 of the Bombay Tenancy Act, 1939 provides:

> "Notwithstanding any agreement, usage or Law to the contrary, nosuch lease as is specified in clause (b) of sub-section (1) shall be terminated before the expiry of a period of 10 years only on the ground that the period of the lease has expired."

The proviso to that sub-section states that any such lease as is specified in clause (b) of sub-section (1) may be terminated by a tenant before the expiry of a period of 10 years by surrendering the lease. Section 24(1A) provides that no landlord shall obtain possession of any land held by a tenant except under an order of the Mamlatdar and for obtaining such order he shall make an application in the prescribed form.

3. No formality for surrender of a lease has been prescribed by the Act. What appears necessary for surrender of a lease is delivery of possession of the leased land. It is precisely because surrender of a leawe is a matter of intention and can be so easily achieved that the prohibition under sub-section (1A) of section 24 must be strictly construed; as otherwise door would be left open to fraudulent pleas by landlords of implied surrenders by tenants. The prohibition under sub-section

(1A) of section 24 is absolute, and it is the intention of that prohibition that delivery of possession by a tenant should necessarily come under the scrutiny of the Mamlatdar and proved to his satisfaction. There is no reason to suppose that surrender was intended to be treated as an exception to this rule. It is true that the form prescribed, namely, form IX under rule 14, contemplates that the property must still be in the possession of the tenant. But that form can very well be used by a landlord who seeks to obtain possession from a tenant on the ground of surrender; for, until he obtains possession, the land is presumably still in the possession of the tenant. Compliance with the provisions of section 24(1A) is, therefore, obligatory even in cases where there is a surrender of lease.

Sd/- P.N.Lad
28-11

Remembrancer of Legal ~~Affafx~~ Affairs.

U.R. to R.D. No. 11403, dated the 29th November 1947.

S.A.K.
22-8
4 copies

L.D.R.I.No. 11792/27-8-47.

Submitted.

In R.D. note, para. 2, it has been stated as follows:-

"The point raised by the petitioners reduces to this:- Whether the provisions of Sections 8 and 33 of the Khoti Settlement Act, 1880, as now amended, would prevail irrespective of the provisions of Sections 12, 14-A and 15 of the Bombay Tenancy Act. In other words, whether the rent payable by the quasi-dharekaris and permanent tenants under sec. 33 of the Khoti Settlement Act, 1880, is restricted to the max. rates of rent fixed by Govt. under sec. 15 of the Bombay Tenanct Act. A perusal of Sub-Section 2 of sec. 15 of the Bombay Tenancy Act shows that the max. rates of rent ~~it~~ fixed under sub-section (1) of sec. 15 override the rents payable according to any agreement, usage, decree or order of a court, if such rent ~~fixed by~~ are in excess of the max. rates of rent fixed by Govt., and do not overide the rates of rents payable according to the specific provisions of any law. The rents payable by the quasi-dharekaris and parmanent tenants in villages in which the Khoti Settlement Act is in force are governed specifically by the provisions of section 33 of the Khoti Settlement Act, 1880, and accordingly the provisions of sec. 15 of the B.T.Act cannot apply to the rents payable by quasi-dharekaris and permanenet tenants in the khoti villages of the Ratnagiri distt. The R.L.A. may be requested u.o. to state whether this view of correct".

R.L.A. is accordingly requested to advise.

S.A.K.
22-8
4 copies.

OPINION OF THE R.L.A.

Maximum rates of Rent. Bombay Tenancy Act. 1939 and Khoti Settlement Act, 1880.

Seen and returned.

2. The view taken by the Revenue Department is correct.

Sd/-K.M.Lad
1-12

Remembrancer of Legal Affairs.

U.H. to R.D., No. 11498 dated 1-12-1947.

S.A.E.
22-8
4 copies

Office of the R.L.A.

The questions raised for the consideration of the R.L.A. are:-

(1) Whether by virtue of section 26 of the Bombay Tenancy Act, 1939, permanent tenants are saved from the provisions of section 13A.

(2) Whether the first option of purchasing the interest in the site of any co-owner or co-sharer should be given to the tenant under section 16 of the Bombay Tenancy Act.

2. Section 13A of the Bombay Tenancy Act, 1939, provides that the provisions of sections 5,6,10 and 11 shall apply to all tenants. Section 26 enacts that no provision contained in this Act shall be construed to limit or abridge the rights or privileges of any tenant under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a court or otherwise howsoever. It is apparent that the rights or privileges of a permanent tenant are in no way affected by the provisions of the Bombay Tenancy Act, even though such rights or privileges are curtailed by sections 5, 6, 10 and 11. The view taken by Secretary, R.D. is correct.

3. Under section 16(1), if a landlord to whom the site referred to in section 17 belongs intends to sell such site, the tenant at the expense of whom or whose predecessor-in-title, a dwelling house is built thereon shall be given in the manner provided in sub-section (2) the first option of purchasing the site at a value determined by the Mamlatdar in the manner provided therein; and under sub-section (5), any sale of a site held in contravention of this section shall be null and void. Where the only property owned by co-sharers is the site itself and nothing more, and if one of the co-sharers sells his undefined

terest in such site; the tenant would be entitled to the first option of purchasing it; for, such interest though undefined can be ascertained by a suit for partition, and it would be obvious that upon such partition the purchaser will get a part of the site contrary to the provisions of section 18(1). Where, however, the site is only a part of bigger area, and a co-sharer sells his undefined interest in the entire area, the tenant would not be entitled to the right of pre-emption for, in the eventual partition the site itself may not be allotted to the share of the purchaser and thus may remain unaffected by the sale. It is apparently not the intention of the Act that, because the tenant has built upon some part of the field, he should have a right of pre-emption for the remaining part of the field also. The first option of purchasing is confined to the site and does not extend to the entire field.

Sd/- P.M.Lad
6-12

Remembrancer of Legal Affairs.

U.R. to R.D. No. 11762, dated the 5th December, 1947.

S.A.K.
22-8
4 copies

15346 (19-12-47.

Submitted with reference to H.D. note at p. 23 ante.

Please see this office note at p. 425 of G Counsel/49 at slip F. below where the P.P.Surat was instructed to appear on behalf of the tenant against whom a complaint was filed by the landlord under sec. 447 I.P.C. H.D. now propose to issue a letter to the High Court as in the draft at p. 25 ante requesting that a circular may be issue to registrater not to entertain such criminal complaints which are on their p fees of a Nil nature. The papers are shown to the R.L.A. before issue of the letter.

S.A.K.
22-8
4 copies

Office of the R.L.A.

I doubt the propriety of approaching the High Court with a request to issue general instructions to magistrates not to entertain ~~instructions to magistrates not to entertain~~ complaints in such cases. In so far as such request based on well-established law, it will be deemed unnecessary; ~~nfx~~ if it purports to go beyond the established legal position and seeks to favour tenants, it will not be countenanced by the High Court. Perhaps the most politic course would ~~be~~ be to bring the lordship to the High Courts notice with a request that their Lordships may consider the desirability of inviting the attention of magistrates to the well-established legal position in this matter.

Sd/- P.N.Lad
22-12

Remembrancer of Legal Affairs.

U.R. to E.D. No. 13343, dated the 23rd December 1947.

S.A.K.
22-8
4 copies

h. L. A.

(Copies of Remembrancer of Legal Affairs opinion No. 10351, dated 29th October 1947).

Applications for determining rents Bombay Tenancy Act 1939 Section 12 (1)

"The rent payable by each tenant is required to be determined separately. The fact that there is a common landlord and the lands though leased out separately, are of the same classification would be no valid ground for including all such lands in one application for determining the rent of each land. More than one tenant can be included in such application provided the right to relief against them is in respect of or arises out of the same act or transaction whether jointly or severally or in the alternative any common question of law or fact would arise. Each lease is a separate transaction and no common question of law or fact is likely to arise in such a case. From the tenant's point of view it is necessary that each tenant should be able to represent his case separately and get his liability separately determined. Consequently there can be no joinder of all tenants in one application for determining the rent payable by each tenant for the land leased to him. There should therefore be a separate application in respect of each tenancy, but therefore there would be no objection to linking or even consolidating all such applications to facilitate hearing and to suit the convenience of parties."

(Below copy of Remembrancer Legal Affairs's opinion, No. 10351, dated 29th October 1947.)

No. 5398/45-5447-F
Revenue Department.
Bombay Castle, 6th December 1947.

Copies forwarded for information and guidance to:

The Commissioner, Central Division (with reference to his Memorandum, No. L.N.D. /Sa/0/577, dated 23rd June 1947),
The Commissioners Northern and Southern Divisions,
the Collector of Satara (with reference to his letter, No. A.G.R./W. 1163, dated 22nd May 1947) (with case papers),
All other Collectors,
the Director of Publicity,
the Home Department,
the Remembrancer of Legal Affairs.

2. The Director of Publicity should issue a Press Note clarifying the position and supply ten copies of the Press Note when issued to this Department.

By order of the Governor of Bombay,
Sd/-

For Under Secretary to the Government of Bombay,
Revenue Department.

S.A.K.
22-8
4 copies

Office of the R.L.A.

Stamp on authority under section 12(11). Bombay Tenancy Act, 1939 and Indian Stamp Act, 1899.

Under section 2(21) of the Indian Stamp Act, 1899. "Power of attorney" includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act for and in the name of the person who executing it. Sub-section (11) of section 12 of the Bombay Tenancy Act, 1939, provides that any party to proceedings under the section (see sub-section (1) and (2)) may appear by any person authorised in writing to act on his behalf. An instrument in writing which authorises a person to appear and act for and on behalf of the person executing it, would fall within the meaning of the expression "power-of-attorney" and be liable to stamp duty under Art. 48 of Schedule I to the Stamp Act. It however, a certificated Mukhtar or Pleader is authorised by a person in writing to appear and act on his behalf, the instru-ment would be a Mukhtarnama or Vakalatnama liable to payment of court-fee under clause (a) of Art. 10 in schedule II to the Court-fees Act, 1870.

Sd/-K.M.Lad
19-12

Ex-officio Secretary of Legal Affairs.

U.O. to R.D.No. 13184, dated the 20th December 1947.

S.A.E.
22-6
4 copies

Bombay Tenancy Act.
Administration of Section
24 of-

GOVERNMENT OF BOMBAY.
REVENUE DEPARTMENT.
Circular No. 3498/45-II.
Bombay Castle, 30th December 1947.

GOVERNMENT CIRCULAR.

Government has noticed that a uniform practice has not been observed by officers entrusted with the administration of the Bombay Tenancy Act in granting possession of any agricultural land under sub-sections(1) or (1A) of section 24 of the Bombay Tenancy Act when crops are standing in the land concerned. Government considers that in fairness to the person who has raised crops in any land under a bona fide belief that he was entitled to cultivate the land, the officers concerned should, in granting possession of such land as far as possible follow the principle contained in the proviso to sub-section (1) of section 21 of the Mamlatdars' Courts Act, 1906, and should generally continue status quo of possession till the removal of standing crops at the proper time by the person who raised the crops.

By order of the Governor of Bombay.
V.N.SARDESAI.

Secretary to Government.

To

The Commissioners, Northern and Southern Divisions.
The Commissioner, Central Division.
The Settlement Commissioner and Director of Land Records.
All Collectors.
All Prant Officers.
All Mamlatdars and Mahalkaris.
The Home Department.
The Legal Department.

No. of 1947.

Copy forwarded for information and guidance to.

S.A.K.
22-8
4 copies

Submitted with reference to R.D.'s note at pp/ 2-3 ante.

2. The Collr. of Belgaum (at p. 1 ante observes as 4(1)(a) and (b) is entitled to its restoration if he gives the requisite notice to the land-lord within the prescribed period (sec. 4(2) of the Bombay Tenancy Act). If the land has already been leased by the landlord to another tenant his tenancy will have to be terminated in favour of the protected tenant. But this conflicts with the provisions of sec. 23, according to which leases shall be for a period of 10 years".

3. The papers have been referred to R.L.A. by R.D. to advise in the matter.

4. The Commissioner, S.D. is of the view that "the prior rights of a protected tenant must prevail over the rights of an ordinary tenant. Thus, the lease granted in favour of an ordinary tenant under s. 23 of the Bombay Tenancy Act must be cancelled in favour of a protected tenant entitled to restoration of the land under sec. 4(2) of the Act".

5. The R.D. is of view that -"In view of the specific provisions contained in sub-section (2) of section 23 of the B.T.Act the view expressed in para 2 of the Comrs. foregoing memo is not correct."

6. The relevant portions of section 4(2) of the Bombay Tenancy Act , 1939, for the purpose of this reference are as under:-

person who is deemed to be a protected tenant under sub-section (1) shall, if he intimates in writing to the landlord----------within one year after coming into force of this section ----------
that he is willing to hold the land on the same terms and conditions on which he held it at the time when he was

evicted, be entitled to recover possession of the land-

(a)

(i) if the land has been leased out by the landlord for a period expiring after the 31st day of May immediately following the date of the coming into force of this section in the area in which the land is situated, from the date on which such lease expires; and

ii) - - -

Thus this section provides that in cases where the land is leased out by the landlord, the protected tenant is entitled to recover possession from the date on whmt which the lease expires, i.e. within one year on the lease as the lease in such cases is generally for one year.

Now section 23(1) of the same Act provides that no lease can be granted for less than 10 years and every lease is to be deemed to be for 10 years.

And section 23(2) provides that notwithstanding any agreement, usage or law to the contrary, no such lease as is specified in clause (b) of sub-section (1) shall be terminated before the expiry of a period of 10 years only on the ground that the period of the lease has expired.

Thus there is a clear conflict between the two sections as pointed out by the Collector (and at A and B above).

But as the Tenancy Act is chiefly for the benefit of the protected tenants (as defined under the A) section 4 may be deemed to prevail over section 23.

Sd/-
15-12

However R.D. may be informed that R.L.A. does not think it advisable to give an opinion upon merely hypothetical facts.

A.A.S.

Clause (b) of sub-section (1) of section 23 of the Bombay Tenancy Act, 1939, provides that every lease subsisting on the said date (the date on which the section comes into force) or made after the said date in respect of any ink land in such area shall be deemed to be for a period of not less than ten years. Under sub-section (2),

notwithstanding any agreement, usage or law to the contrary, no such lease as is specified in clause (b) of sub-section (1) shall be terminated before the expiry of a period of ten years only on the ground that the period of the lease has expired.

Under clauses (a) and (b) of sub-sec.(1) of sec. 4 of the tenants who held the land and cultivated personally continuously for a period of not less than six years immediately preceding 1st April 1937 or 1st April 1944 and who were evicted from such land on or after the said dates otherwise than by order of a competent court on any of the grounds specified in sec. 5(2) , are deemed to be protected tenants. Under sub-sec. (2), if such a protected tenant intimates in writing to the landlord in cases falling under cl. (a) of sub-sec. (1) within one year after the coming into force of this section in the area in which the land is situated, and in cases falling under cl.(b) within one year after the coming into force of the Bombay Tenancy (Amendment) Act, 1946, that he is willing to hold the land on the same terms and conditions on which he held it at the time when he was evicted, be entitled to recover possession of the land-

(a) in cases falling under cl. (a) of sub-sec. (1)-

(i) if the land has been leased out by the landlord after the 31st day May immediately following the date of the coming into force of this section in the area in which the land is situated, from the date on which such lease expires; and

(ii) in other cases, from the 1st day of June immediately following the date of the coming into force of this section in the area in which the land is situated;

(b) if the land has been in cases falling under cl.(b) of sub-sec.(1)-

(i) if the land has been leased out by the landlord for a period expiring after the 31st day of May immediately following the date of the coming into force of the Bom. Tenancy (Amendment) Act, 1946 , from the date on which such lease expires;

(ii) in other cases from the 1st day June immediately following the date of the coming into force of the Bom. Tenancy (Amendment) Act, 1946.

And on recovering possession ; he shall, subject to the provisions of this Act, hold the land on the said terms and conditions.

It will be noticed that sub-sec. (2) of sec. 4 confers a right on the tenants deemed to be protected tenants under sub-sec. (1), recover possession of the lands from which they were evicted and which they are willing to hold on the same terms and conditions on which they held at the time of their eviction. Under sec. 4(2) they are entitled to recovery possession of the lands which have been already leased out by the landlord, and it specified the dates from which possession could be recovered. The dates for enforcement of the right to recover possession of the lands leased out are specified in sec. 4(2) , and in view of this specific provision, it cannot be said that the duration of the lands leased out by the landlord would be deemed to be for 10 years under sec. 23(1)(b). To put such an interpretation would be tatamount to defeating the very object for which sec. 4(2) is brought on the statute book, for it would postpone the recovery of possession by a protected tenant for a period of ten years in spite of sec. 4(2) ~~is-brought-on-the-statute-book,-for-it-would-~~ making special provision providing for the dates from which recovery could be made . Under sec. 24(1) a tenant entitled to possession of any land under the provisions provisions of the Act may make an application in the prescribed form for such possession to the Mamlatdar, under sub-sec. (2), the Mamlatdar shall, after holding at enquiry in the prescribed manner, pass such order as he deems fit.

S.A.K.
22-8
4 copies

Office of the H.L.A.

The view taken by the Collector, Belgaum that there is conflict between section 4(2) and section 23(1) of the Bombay Tenancy Act, 1939, is correct, and it appears necessary to amend the Act.

35/-2-H.Lad
27-12.

Remembrancer of Legal Affairs.

U.O. to L.D., No. 13458, dated the 29th December 1947.

S.A.K.
22-8
4 copies

Office of the Remembrancer of

Legal Affairs.

****** ******* ******

The question raised for the consideration of the Remembrancer of Legal Affairs is whether the leases of lands of the saranjam estate during management come within section 25 of the Bombay Tenancy Act, 1939. Section 25 of the Bombay Tenancy Act, 1939, provides:

"Nothing in this Act shall apply to lands-

1) held on lease from the Crown or a co-operative Society, or
2) held on lease for the benefit of an industrial or commercial undertaking."

The point for determination, therefore, is whether during management the lands can be said to be held on lease from the Crown. Under-rule V of the Saranjam Rules, every saranjam shall be held as a life estate. It shall be formally resumed on the death of the holder, and in cases in which it is capable of further continuance, it shall be made over to the next holder as fresh grant from the Crown unencumbered by any debts or charges save such as may be specially imposed by Government itself. Under rule V(A), in cases in which there is no suitable person to whom a re-grant can immediately be made, or in which an immediate re-grant would be injurious to the interests of the estate, the saranjam may be attached andplaced under Government management for such period as Government may consider necessary, and the revenue of the saranjam after deduction of the expenses of management may be assigned for the main-tenance of therepresentatives of the deceased saranjamdar, in such manner and in such proportion as Governmentmay from time to time direct. The resumption under rule 5 is a formal resumption, and the intention is not to interfere with the succession, the object being to enable Government to hand over the estate unencumbered by any debts and charges: (Sakharam Ba versus Trimbak 23 Bombay Law Reporter, 314). Under

S.A.K.
22-8

...e V read with rule II, in cases in which a saranjam is capable of further continuance, the rights of Government to resume absolutely do not fall to them until the saranjam becomes incapble of further ~~xxxxxx~~ continuance. It is only when such right accrues to Government that it will be entitled to resume the property itself. Until such an event happens, Government has no interest of its own in the saranjam: (p. 40 of Law of Saranjam by Phadnis). It follows, therefore, that the re-sumption under rule V and the attachment and management under rule V(A) do not vest the estate in Government for purposes of rights and liabilities against the estate. The leases granted by the manager must be treated as leases granted on behalf of the estate. The land is held on lease from the estate by its manager and not from the Crown direct. It is onlylands which are held on lease from the Crown in the true sense of that term which were exempted from the operation of the Bombay Tenancy Act, 1939, by section 25 thereof.

****

Sd/-F.N.Lad

Remembrancer of Legal Affairs.

~~XXXX~~
S.A.R.
22-8
4 copies

Office of the H.L.A.

Failure to pass receipts Bombay Tenancy Act, 1939.

I do not think that these are cases fit to be taken in appeal by the Crown under section 417 of the Code of Criminal Procedure. It is true that there is a technical breach of the provisionof section 22 by the accused in both the cases inasmuch as he failed to give receipts for the amount of rent received by him, and that the receipts have to be in the prescribed form.. It appears to me, however, that by mutual consent of the parties endorsements were made on the rent notes recording the payments instead of passing receipt for the same. In both the cases the rent notes bear endorsements of the payments and these endorsements are signed by both the parties. If the landlord had entertained an evil design, he would not have got such endorsements made on the rent notes. The landlord appears to have acted bona fide; and there is no particular principle involved in the case. The tenant in this case is not an illiterate agriculturist. He is a literate person and was the manager of a fair price shop.

The Government Pleader, High Court, was consulted. He is also of the opinion that it is not advisable to file appeals in these cases. A copy of his opinion is sent herewith.

Sd/- [illegible].M.Lad
15-12

Remembrancer of Legal Affairs.

U.O. to R.D.No. 13004/ dated the 16th December 1947.

Office of the Remembrancer of
Legal Affairs.

The question raised for the consideration of the Remembrancerof Legal Affairs. are:-

1) Whether by virtue of section 26 of the Bombay Tenancy Act, 1939 permanent tenants are saved from the provisions of section 13A.

2) Whetherthe first option of purphasing the interest in the site of any co-owner of co-sharer should be given to the tenant under section 18 of the Bombay Tenancy Act.

2. Section 13A of the Bombay Tenancy Act, 1939, provides that the provisions of section 5, 6, 10 and 11 shall apply to all tenants. Section 26 enacts that no provision contained in this Act shall be construted to livit or abridge the rights or privileges of any tenant under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a court or otherwise howsoever. It is apparent that the rights or privileges of a permanent tenant are in no way affected by the provisions of the Bombay Tenancy Act, even though such right or privileges are curtailed by sections 5,6,10 and 11. The view taken by Secretary, Revenue Department, is correct.

3. Under section 18(1), if a landlord to whom the site referred to in sec 17 belongs intends to sell such site, (the tenant at the expense of whom or whose predecessor-in-title, a dwelling house is built thereon shall be given in the manner provided in sub-section (2) e the first option of purchasing the site at a value determined by the Mamlatdar in the manner provided therein; and under sub-section (5), any sale of a site held in contravention of this section shall be null and xim void. Where the only property owned by co-sharers is the site itself and nothing more, and if one of the co-sharers sells his undefined interest in such site, the tenant would be entitled to the first option of purchasing it; for, such---

such interest though undefined can be ascertained by a suit for partition, and it would be obvious that upon such partition the purchaser will get a part of the site contrary to the provisions of section 18(1). Where, however, the site is only a part of an bigger area, and a co-sharer sells his undefined interest in the entire area, the tenant would not be entitled to the right of pre-emption for in the eventual partition the site itself may not be allotted to the share of the purchaser and thus may remain unaffected by the ~~xtx~~ sale. It is apparently not the intention of the Act that, because the tenant has built upon some part of the field, he should have a right of pre-emption for the remaining part of the field also. The first option of purchasing is confined to the site and does not extend to the entire ~~fitxd~~ field.

Sd/-P.M.Lad.

Remembrancer of Legal Affairs.

S.A.K.
22-8
4 copies.

Office of the Remembrancer of
Legal Affairs.

The question raised for the consideration of the Remembrancer of Legal Affairs are:-

1) Whether by virtue of section 26 of the Bombay Tenancy Act, 1939 permanent tenants are saved from the provisions of section 13A.

2) Whether the first option of purchasing the interest in the site of any co-owner of co-sharer should be given to the tenant under section 18 of the Bombay Tenancy Act.

2. Section 13A of the Bombay Tenancy Act, 1939, provides that the provisions of sections 5,6,10 and 11 shall apply to all tenants Section 26 enacts that no provision contained in this Act shall be constructed to limit or abridge the rights or privileges of any tenant under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a courtor otherwise howsoever. It is apparent that the rights or privileges of a permanent tenant are in no way affected by the provisions ~~of a permanent tenant are in no way affected by the provisions~~ of the Bombay Tenancy Act, even though such rights or privileges are curtailed by sections 5,6,10 and 11. The view taken by Secretary, Revenue Department, is correct.

3. Under section 18(1) , if a landlord to whom the site referred to in section 17 belongs intends to sell such site, the tenant at the expense of whom or whose predecessor-in-title, a dwelling house is built thereon shall be given in the manner provided in sub-section (2) the first option of purchasing the site at a market value determined by the Mamlatdar in the manner provided therein; and under sub-section (5) any sale of a site held in contravention of this section shall be null and not voild. Where the only property owned by co-sharers the site itself and nothing more, and if one of the co-sherers sells his undefined interest in suchsite, the tenant would be entitled to the first option of purchasing it for, such interest though undefined can be ascertained by a suit for partition, and it would be obvious that upon such partition the purchaser will get a part of the site contrary to the provisions of section 18(1). Where, however, the site is only a part of a bigger area, and a co-sharer sells his undefined interest in the entire area, the tenant would not be entitled to the right of pre-emption for, in the eventual partition the site itself may not be allotted to the share of the purbhaser and thus may remain unaffected by the sale. It is apparently not the intention of the Act that, because the tenant has built upon some part of the field, he should have a right of pre-emption for the remaining part of the field also. The first option of purchasing is confined to the site and does not extend to the entire field.

Sd/-P.M.Lad.

Remembrancer of Legal Affairs.

S.A.K.
22-8
4 copies

Submitted.

2. Collr. of Broach in his letter at p. ante invites attention to para 2 of Govt. letter No. 7305/45/19910-F. dated the 27th February 1945 and states that if the rights or privileges of a permanent tenant are in no way affected by the Bombay Tenancy Act. 1939. it is clearly a contradiction in terms to say that they are curtailed by sections 5.6.10 and 11 of the Act, for in that case a permanent tenant is inevitably reduced to the position of a protected tenant. He requests that the position of permanent tenants under the Act may b e clearly defined. R.D. states that the point raised by the Collr. is with reference to A of H.L.A.'s opinion No. 11762. dated the 8th December 1947 and means that the provisions of secs. 5.6.10 and 11 do not generally operate in the case of permanent tenants in view of the provisions contained in sec. 26 unless contrary is provided for by agreement, usage or custom. The H.L.A. is requested to advice whether this clarification is correct.

3. The position stated by R.D. is correct. As stated therein sections 5.6. 10 and 11 of the Bom. Tenancy Act. 1939 do not apply to permanent tenants and their rights or privileges are not affected by the provisions of those sections. The rights and privileges curtailed by these sections are those of the ordinary tenants and not of privileged ~~tenan~~ tenants. The last but one sentence in para 2 of H.L.A.'s opinion No. 11762. dated the 8th December 1942 is not happily worded and requires clarification. The position may be stated correctly. By the addition of words "of ordinary tenants" at the end of the last

S.A.K.
22-5
5 copies

Office of the R.L.A.

The view taken by the Revenue Department at pp. 81-82 ante is correct. The view at 'A' of R.L.A.'s opinion at page 79 ante is correct and needs no amendment or clarification.

Sd/-P.M.Lad
29-5

Remembrancer of Legal Affairs.

U.R. to R.D.NO. 5120, dated the 31st May 1948.

S.A.K.
22-5
4 copies

The question referred to the R.L.A. is whether there is any conflict between sections 11 and 23 of the Bombay Hereditary offices Act, 1874, on the one hand and the Bombay Tenancy Act, 1931 on the other.

Section 23 of the Bombay Hereditary Offices Act, 1874, provides for the assignment of watan property towards the emoluments of officiators. Under section 7 watan property assigned under section 23 as remuneration of an officiator and the profits of watan property so assigned shall not be alienated or assigned to any person without the sanctionof the Provincial Government. When any alienation of an assigned watan property takes place without the sanction of the Provincial Government the Collector shall declare such alienation to be null and void under section 11 and either (a) summarily resume possession by evdhing any person wrongfully in possession of any land or (b) levy any rent due by any person in the manner that may be prescribed in any law for the time being in force for the levy of a revenue demand (see secs. 11A and 12). The word "alienation" as used in section 11 means passing into ownership or beneficial possession of a person and such alienation may be voluntary or involuntary (see Phadnis's Watan Act p. 61).

Under sub-section (2) of section 5 of the Bombay Tenancy Act, 1939, the tenancy of a protected tenant shall not be terminated except under certain specified circumstances; and under section 23, ~~even certain specified circumstances; and under~~ an annual Rent shall be deemed to be for a period not less than 10 years and shall not be terminated before the expiry of a period of 10years notwithstanding any agreement usage or law to the contrary. It is, therefore apparent that by virtue of these provisions the tenant of an assigned watan land shall be entitled to its beneficial posse ssion, which would amount to an involuntary alienation thereof within the meaning of section 11. Consequently, there would arise a conflict between the provisions of sections 7, 11 and 23 of the Bombay Hereditary Offices which prohibit such alienation and the provisions of the Bombay Tenancy Act, which

protect it.

The next question for consideration would bewhich of the two Acts will prevail with respect to assigned watan lands. It is a general principle of construction of statutes that a general later law does not abrogate an earlier special one by mere implication. In other words "where general words in a later Act are capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation - --- that earlier and special legislation is not to be held indirectly repealed, altered or derogated from merely by force of such general words without any indication of a particular intention to do so " (see Seward v. The Vera Cruz. Lord Selborne c 10 App. Cas. p. 59, 68; Maxwell p. 156). The Bombay Inam Hereditary Offices Act. 1874, is an earlier Special Act, while the Bombay Tenancy Act. 1939, is a general later law. There are no express words in the latter excluding tl application of the former in respect of tenancies of assigned watan lands. It is true, section 23(2) contains words "notwithstanding any law to the contrary"; but by those words the application of any law providing for the termination of lease on the ground of the expiry of the period of lease is excluded. To resume possession of an alienated assigned watan land no termination of lease is required even if such alienation be by way of a lease. Consequently, it appears that tenancies of assigned watan lands would not be covered by the Bombay Tenancy Act. 1939.

Sd/-D.V.Vyas

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6370, dated the 14th August 1947.

S. AK.
23-8
4 copies

In this case huks, veres, taxes and cesses in cash or kind and services of diverse nature are levied and exacted by the Talukdar from the inhabitants of his villages. They include a fee on transfers of property, gifts from inferior holders and from village Patels, a tax on marriage, a tax on buildings newly constructed and taxes on almost all the professions usually followed in a village. R.L.A.'s opinion is sought on the question whether the Talukdar can, under section 14 of the Bombay Tenancy Act of 1939, be prohibited from levying such huks, veres, taxes and cesses etc.

2. Section 14(1) of the Bombay Tenancy Act provides that notwithstanding any agreement, usage or law, it shall not be lawful for any landlord to levy any cess, rate, vero, huk, tax or service of any description or denomination whatsoever, from any tenant in respect of any land held by him as a tenant other than the rent lawfully due in respect of such land; and sub-section (2) enacts that any person who levies any such cess, rate, vero, huk, tax or service in contravention of the provisions of sub-section (1) shall on conviction be punishable with fine which may extend to Rs. 1,000. For the application of this section, it is necessary to hold that the Talukdar is a landlord, ~~and necessary to hold that the Talukdar is a landlord,~~ and the levy is from a tenant in respect of a land held by him as a tenant.

3. According to the Bombay Survey Settlement Manual, Vol. I, the leading characteristic of talukdari tenure is that a Talukdar's estate is held neither in gift (i.e. alienated) nor in occupancy (i. unalienated) but with the full proprietary rights antedating the

advent of the British rule and including the ownership of lands, minerals and trees." (See 43 Bombay Law Reporter, p. 167 at p. 172). That is the correct description of the talukdari tenure. Consequently the Talukdars must be treated as the proprietors of the lands with full powers to lease the lands. A "landlord" is defined i n section 3(15) of the Bombay Land Revenue Code to mean a lessor. That the Talukdars are lessors can hardly admit of any doubt. Generally almost all the inferior holders in a talukdar estate or village are tenants-at-will of the Talukdar or Talukdars. All the village lands pay rent to the Talukdar, except such as he, or his ancestors, may have given away, either as absolutely to temples etc. or to village servants mostly keep a portion in their own hands cultivating it by their house servants. The rest they let out to the tenantry. (See Dandekar's Law of Land Tenures Vol. I) One of the items in the Settlement Register of a Talukdari estate prepared under section 5 of the Gujrat Talukdars' Act, 1886, shows if the estate is divided themanner in which the co sharers are to collect from the tenants. (section 5(c)(iii)). Section 33(2)(c) also contemplates the power to let out the lands even when the management is taken over by Government. The Talukdars, who are undoubtedly superior holders, must, therefore, be treated as landlords, and the inferior holders under them as tenants. Such inferior holders would be covered by the definition of "tenant" in section 2A of the Bombay Tenancy Act. Section 14(1) of that Act will, therefore, apply . R.L.A.'s opinion No. 561-L dated 20th August 1938 shows that it was so intended to apply. Action can, therefore, be taken against the Talukdar for levying the cesses, rates, veros, huks etc. in so

far as such levy is from a tenant in respect of the land held by him.

4. If on the other hand the levy is from a person who does not hold any land under the Talukdar, but who merely plies any trade or follows any profession or holds any office in his village, section 15 of the Bombay Tenancy Act would not be applicable. In order to prohibit levies from such Non-tenants, action would have to be taken under the Bombay Haqqa Prohibition Act, 1939 (XX of 1939) read with the Bombay Town-Duties Abolition Act, 1844, whereunder cesses of every kind on trades or professions under whatsoever name levied within the Presidency of Bombay and not forming of the land revenue were abolished.

Sd/- [illegible].M.Lad
13-6

Remembrancer of Legal Affairs.

U.R. to R.D.No. 6138, dated the 13th June 1947.

S.A.K.
23-8
4 copies